

Public Record Documents requested by the City Attorney:
March 31, 2007 Agreement between the San Diego County Regional Airport Authority and the City of San Diego for Executive Loan of Services of Airport Authority Employee Theodore (Ted) C. Sexton, which violates Section 40 of the San Diego City Charter.
Documents released to media on June 12, 2007

1.

A.

March 2, 2007

Letter from Mayor Jerry Sanders to San Diego County Regional Airport Authority Chairman Alan Bersin re Montgomery Field—Sunroad Litigation. Letter requests “that the Airport Authority assist us in analyzing the situation and in working with the FAA and other interested stakeholders in an attempt to resolve this issue.”

B.

March 12, 2007

Letter from Bersin to Mayor, acknowledging March 2, 2007 correspondence in which Mayor requests “assistance from the San Diego County Regional Airport Authority to help resolve issues surrounding the Sunroad Enterprises building near Montgomery Field.”

2.

March 7, 2007

Letter from Federal Aviation Administration’s Karen McDonald to Andy Stallings “Notice of Presumed Hazard”

3.

April 2, 2007, 1:15:39 p.m.

E-mail from Grace Chao to Mike Tussey regarding Ted Sexton’s employment for next 6 months and \$150 monthly parking fee.

4.

May 18, 2007, 1:09 p.m.

E-mail from Ted Sexton to Federal Aviation Administration’s Kevin Haggerty and Kimberly Middleton regarding draft of “Hazardous

Obstruction Elimination" confirming FAA meeting Tuesday, May 22 at FAA Offices at Meecham Airport in Texas.

5.

May 18, 2007, 1:11: p.m.

E-mail from Federal Aviation Administration Aeronautical Information Management's Kimberly Middleton to Ted Sexton regarding map directions to meeting with FAA in Fort Worth, Texas and confirming meeting with FAA's Kevin Haggerty, Tuesday, May 22 at 3 p.m., Fort Worth, Texas

6.

May 18, 2007, 4:07 p.m.

E-mail from Ted Sexton to A Shafer of san.org regarding "DRAFT Presentation to FAA re Centrum I at Montgomery Field" stating "all corrections and improvements most welcome."

7.

May 18, 2007, 4:37 p.m.

E-mail from Ted Sexton to Federal Aviation Administration's Brian Armstrong regarding "DRAFT Presentation to Kevin Haggerty on Centrum I at MYF (San Diego)" sending attached presentation

Note:

Mayor's media remarks of May 18, 2007 never informed the public that a meeting had been arranged for City staff and Ted Sexton to meet with FAA in Texas regarding flight pattern modifications and Sunroad Centrum I building modifications. #19 in packet.

8.

May 19, 2007, 6:59 a.m.

E-mail from Thomas Kamman to Ted Sexton regarding "Drawings" Related to Sunroad

9.

May 19, 2007, 7:14 a.m.

E-mail from Thomas Kamman to Ted Sexton regarding "Drawings"

related to Sunroad stating, "I changed the height shown in Slide 9 to reflect the data shown on the Sunroad building drawings."

10.

May 21, 2007, 3:42 p.m.

E-mail from Linda Johnson to Shafer-Payne Angela and Ted Sexton "DRAFT Presentation to FAA re Centrum I at Montgomery Field" related to the 2004 ALUCP update that amended the Montgomery Field ALUCP "to designate as incompatible any proposed development project that is not consistent with the FAA Part 77 requirements."

11.

May 21, 2007, 5:09 p.m.

E-mail from Ted Sexton to Tom Story at Sunroad Enterprises "Draft Presentation to FAA (Obstruction Evaluation Service) re: Sunroad Centrum I Building, S.D.CA" regarding building height modifications.

12.

May 21, 2007, 5:25 p.m.

E-mail from Ted Sexton to Federal Aviation Administration's Brian Armstrong and Karen McDonald, "Draft Presentation to FAA (OES) re Centrum I building in S.D. CA" confirming presentation to be made in Dallas, Texas

13.

May 21, 2007, 5:30:36 p.m.

E-mail from Karen McDonald to Ted Sexton, "DRAFT Presentation to FAA (OES) re Centrum I Building in S.D. CA" confirming receipt of presentation materials.

14.

May 30, 2007, 1:40 p.m.

E-mail from Ted Sexton to Federal Aviation Administration's Brian Armstrong, Bruce Beard, Eric Vermeeren, George W. Resse, John Urquhart, Tom Dray and Kevin Haggerty and City Staff Jim Barwick and MTussey thanking FAA to "help think through, then

act, to remedy our flight obstruction situation here at Montgomery Field Airport." Four actions requested.

15.

May 31, 2007, 10:47 a.m.

E-mail from Ted Sexton to Federal Aviation Administration's Tom Dray "Review of proposed change of flight procedures at MYF" thanking FAA for "looking over the City's proposal to modify local flight procedures at MYF..."

16.

Air Navigation Hazard Elimination Proposal

Sunroad Centrum 12 Office Building

San Diego, CA

Presented by Jim Barwick, Director, Real Estate Assets, City of San Diego

Ted Sexton, Vice President, Regulated Operations, San Diego County Regional Airport Authority

17.

City of San Diego

Flight Safety Improvements at
Montgomery Field Airport

Prepared for: Office of the Mayor

Prepared by: Real Estate Assets Department

18.

Air Navigation Hazard

Elimination Proposal

Sunroad Centrum 12 Office Building

San Diego, CA

Presented to: Kevin Haggerty, Manager, Obstruction Evaluation
Airport Airspace Analysis (OE/AAA), Federal Aviation
Administration

Presented by: Jim Barwick, Director, Real Estate Assets, City of
San Diego, CA

Ted Sexton, Vice President, Regulated Operations, San Diego
County Regional Airport Authority

Note:

Item #19

Background--significant correspondence from City Attorney, Mayor's Office, Airport Authority, SD Airports Advisory Committee, & Sunroad's law firm

a) Mayor's media remarks of June 7, 2007 regarding the loan executive program between the San Diego County Airport Authority and the City of San Diego state that Sexton "was not brought on board to manage the Sunroad building issue." At this time, the Mayor never informed the public that a meeting had taken place with City staff and Ted Sexton and the FAA in Texas on May 22, 2007 regarding flight pattern modifications and Sunroad Centrum I building modifications.

b) City Attorney's Charter Section 40 of June 8, 2007 requests for all documents related to Ted Sexton.

c) On the afternoon of June 11, 2007, documents related to Sexton are turned over to the City Attorney and reveal that Sexton had been working on the Sunroad Centrum I Building and met with the FAA in Texas.

d) On June 11, 2007, the Mayor issues a letter to City Council revealing Sexton's work on the Sunroad Centrum I Building and that Sexton had met with the FAA. The Mayor's letter reveals to the public that the FAA "told the City's representatives that it would not support any intrusion into the airspace above 160 feet."

[illegible]

SECRET

SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

P.O. BOX 82776, SAN DIEGO, CA 92138-2776
3225 NORTH HARBOR DRIVE, THIRD COMMUTER TERMINAL, SAN DIEGO 92101
619.400.2405 619.400.2406 FAX WWW.SAN.ORG

March 12, 2007

The Honorable Jerry Sanders
Mayor, City of San Diego
202 C Street
San Diego, CA 92101

Dear Mayor Sanders:

Thank you for your letter dated March 2, 2007 in which you request assistance from the San Diego County Regional Airport Authority to help resolve issues surrounding the Sunroad Enterprises building near Montgomery Field.

In our role of addressing the long-term air transportation needs of the region, Airport Authority staff is already working with City of San Diego staff to identify the best approaches for achieving the highest use of air transportation infrastructure in the region. We believe it is in everyone's best interest to understand how other airports might play into meeting the future needs of the traveling public. At the same time, we are fully cognizant of the importance of protecting both public health and safety near all of the county's airports as well as airport operations.

With that in mind, we are more than glad to provide the assistance you requested. The President/CEO of the Airport Authority, Thella Bowens, will assign our highest level executive with the necessary expertise on these issues to work with the City. She will also identify with City staff a scope of work and appropriate procedural issues. Ms. Bowens can be contacted at 619-400-2444.

Sincerely,



Alan D. Bersin
Chairman
San Diego County Regional Airport Authority Board

ADB/dl

cc: SDCRAA Board Members



BOARD MEMBERS

ALAN D. BERSIN*
BRUCE R. BOLAND
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RAMONA FINNILA
PAUL G. NIETO
JIM PANKNIN
ROBERT J. WATKINS*
ANTHONY K. YOUNG
CHARLENE ZETTEL*
*EXECUTIVE COMMITTEE

PRESIDENT/CEO
THELLA F. BOWENS

#1 B



Federal Aviation Administration
Air Traffic Airspace Branch, ASW-520
2601 Meacham Blvd.
Fort Worth, TX 76137-0520

Aeronautical Study No.
2006-AWP-7530-OE

Issued Date: 03/07/2007

Andy Stallings
La Jolla HT LLC
9255 Towne Centre Dr
San Diego, CA 92121

**** NOTICE OF PRESUMED HAZARD ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Building
Location:	San Diego, CA
Latitude:	32-52-30.19 N NAD 83
Longitude:	117-12-12.95 W
Heights:	224 feet above ground level (AGL) 576 feet above mean sea level (AMSL)

Initial findings of this study indicated that the structure as described exceeds obstruction standards and/or would have an adverse physical or electromagnetic interference effect upon navigable airspace or air navigation facilities. Pending resolution of the issues described below, the structure is presumed to be a hazard to air navigation.

Any height exceeding 198 feet above ground level (550 feet above mean sea level), will result in a substantial adverse effect and would warrant a Determination of Hazard to Air Navigation.

See attachment for additional information.

NOTE: PENDING RESOLUTION OF THE ISSUE(S) DESCRIBED ABOVE, THE STRUCTURE IS PRESUMED TO BE A HAZARD TO AIR NAVIGATION. THIS LETTER DOES NOT AUTHORIZE CONSTRUCTION OF THE STRUCTURE EVEN AT A REDUCED HEIGHT. ANY RESOLUTION OF THE ISSUE(S) DESCRIBED ABOVE MUST BE COMMUNICATED TO THE FAA SO THAT A FAVORABLE DETERMINATION CAN SUBSEQUENTLY BE ISSUED.

IF MORE THAN 60 DAYS FROM THE DATE OF THIS LETTER HAS ELAPSED WITHOUT ATTEMPTED RESOLUTION, IT WILL BE NECESSARY FOR YOU TO REACTIVATE THE STUDY BY FILING A NEW FAA FORM 7460-1, NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION.

If we can be of further assistance, please contact our office at (310)725-6557. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2006-AWP-7530-OE.

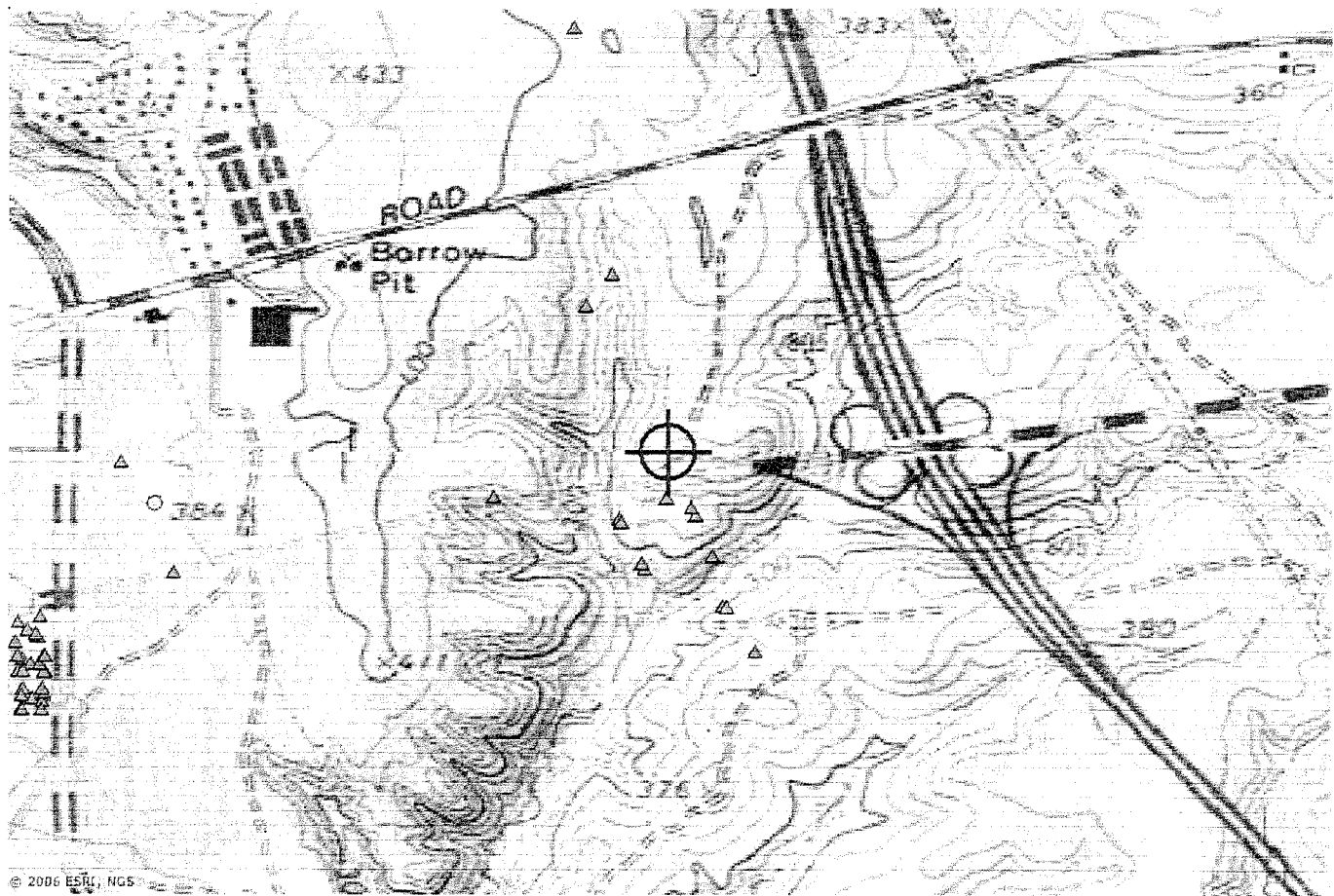
Signature Control No: 496378-534200

(NPH)

Karen McDonald
Specialist
Attachment(s)
Additional Information

Additional Information for ASN 2006-AWP-7530-OE

Navy Mark Moon 01/11/2007 Objection 1. The subject OE's were reviewed for MCAS Miramar, CA with the following findings: a. P-80 Surfaces - No impact b. Instrument Approach Procedures: (1) ASR RWY 6L - The subject OE's would become the controlling obstacle in the final approach segment. Because there is no survey accuracy provided an accuracy code of 4D was added to the OE's. Based on the current information the OE's would require increasing the MDA 80 feet and CAT CDE visibility. The maximum no impact height for the OE's is 550 feet MSL with a minimum survey accuracy code of 2C. c. Departure Procedures - No impact d. The VFR traffic pattern was not evaluate



From: Grace Chao
To: Mike Tussey
Date: 4/2/2007 1:15:39 PM
Subject: FAA Ted Sexton

FYI Mike :)

Per Barwick, recently FAA employee, Ted Sexton is working with the Mayor for the next 6 months. Ted is paid by FAA but Airports will reimburse his parking. Ted will submit his receipt to us each month and we will do petty cash. It is \$150 per month to park in the Parkade and as of July 2007 it will be \$160. Thanks.

Grace

CC: Aubery Major; Consuelo Cousins; Dora Carrasco; Peggy Martinez; Ted Sexton

Ted Sexton - DRAFT Presentation on San Diego (MYF) Hazardous Obstruction Elimination

From: Ted Sexton
To: kevin.haggerty@FAA.gov; kimberly.middleton@FAA.gov
Date: 5/18/2007 1:09 PM
Subject: DRAFT Presentation on San Diego (MYF) Hazardous Obstruction Elimination

Kimberly: Thanks for the help with arrangements and here is an advance copy of the brief to Kevin. It is a final Draft, so a number or two may change but I wanted him to see the direction we're going.

We, on our end, are set pretty much on Tuesday at Meecham Airport (FAA offices) at 3:00pm to brief him, if that's still convenient.

Thanks Again

ps Angelos on White Settlement Road...ummm.

Ted

Ted Sexton - Meeting - Kevin Haggerty & MapQuest Directions

From: <Kimberly.Middleton@faa.gov>
To: <tsexton@sandiego.gov>
Date: 5/18/2007 1:11 PM
Subject: Meeting - Kevin Haggerty & MapQuest Directions

Hello, Ted,

The meeting with Kevin Haggerty will be on Tuesday, May 22, at 3:00 p.m.
The address of the meeting is 4500 Mercantile Plaza Drive, Suite 108, Fort Worth, TX 76137.

The MapQuest directions follow below. Feel free to call me if you have any questions.

Have a great weekend!
Kimberly Middleton
Aeronautical Information Management
(202) 267-9400
800 Independence Ave., SW
Washington, D.C. 20591

----- Forwarded by Kimberly Middleton/AWA/FAA on 05/18/2007 04:00 PM -----

**Kimberly
Middleton/AWA/FAA@FAA**

To Kimberly Middleton/AWA/FAA@FAA
cc

05/18/2007 04:00 PM

Subject MapQuest Directions

From: Dallas-Fort Worth International Airport (DFW) 1530 W 18th St Dallas, TX 75261 US
To: 4500 Mercantile Plaza Dr Fort Worth, TX 76137-4229 US

Driving Directions

1. Start out going SOUTH on INTERNATIONAL PKWY S/TX-97 SPUR S (Portions toll). (3.36 miles)
 2. Take the TX-183 W/TX-360 S ramp toward FT WORTH/ARLINGTON. (0.70 miles)
 3. Merge onto TX-183 W toward FT WORTH. (8.88 miles)
 4. Take the I-820 W exit. (0.89 miles)
 5. Merge onto I-820 N. (5.57 miles)
 6. Merge onto I-35W S/US-287 S/US-81 S via EXIT 16B on the LEFT toward FT WORTH. (0.98 miles)
 7. Take EXIT 56A toward MEACHAM BLVD. (0.13 miles)
 8. Turn SLIGHT LEFT onto N FREEWAY/NORTH FWY W. (0.09 miles)
 9. Turn LEFT onto MEACHAM BLVD. (0.14 miles)
 10. Turn SLIGHT RIGHT onto MERCANTILE PLAZA DR. (0.24 miles)
 11. End at 4500 Mercantile Plaza Dr Fort Worth, TX 76137-4229 US
- Total Estimated Time: 25 minutes
Total Distance: 20.98 miles

To view your driving directions, click on this link:

[Driving Directions](#)

[MapQuest](#): Where to go, how to get there!

Ted Sexton - DRAFT Presentation to FAA re Centrum I at Montgomery Field

From: Ted Sexton
To: ashafer@san.org
Date: 5/18/2007 4:07 PM
Subject: DRAFT Presentation to FAA re Centrum I at Montgomery Field
CC: agosslin@san.org; ljohnson@san.org

My Gang:

Here is a DRAFT briefing to Kevin Haggerty (FAA Obstruction Evaluation Service Manager) skd for Tuesday in Dallas by City's Jim Barwick and little Teddy Sexton.

Please review --more for your info than edit, but all corrections and improvements most welcome.

Ted Sexton - DRAFT Presentation to Kevin Haggerty on Centrum I at MYF (San Diego)

From: Ted Sexton
To: brian.armstrong@FAA.gov
Date: 5/18/2007 4:37 PM
Subject: DRAFT Presentation to Kevin Haggerty on Centrum I at MYF (San Diego)

Brian:

Attached is the presentation skd for Tuesday in Dallas to Mr. Haggerty.

Thanks for everything you are doing to move this forward to resolution

Ted Sexton - Re: Drawings

From: "Thomas Kamman" <tskamman@sbcglobal.net>
To: "Ted Sexton" <tsexton@sandiego.gov>
Date: 5/19/2007 6:59 AM
Subject: Re: Drawings

Here's the drawings and I do have your presentation. I should have it reviewed shortly.

Ted Sexton <tsexton@sandiego.gov> wrote:

OK, no problem. Hope you got my presentation

Ted

>>> <tskamman@sbcglobal.net> 5/18/2007 3:03 PM >>>

I have some data from Sunroad but can't review it on my Blackberry.

Will send to you tonight.

Sent via BlackBerry from Cingular Wireless

Ted Sexton - Re: Drawings

From: "Thomas Kamman" <tskamman@sbcglobal.net>
To: "Ted Sexton" <tsexton@sandiego.gov>
Date: 5/19/2007 7:14 AM
Subject: Re: Drawings

I changed the height shown in Slide 9 to reflect the data shown on the Sunroad building drawings. I think the statement about the City not approving other buildings on the property above 160 feet is premature and should be changed to something more generic such as: "won't approve a building height above that approved by the FAA". Thanks for the opportunity to review the presentation. Good luck on Tuesday.

Ted Sexton <tsexton@sandiego.gov> wrote:

OK, no problem. Hope you got my presentation

Ted

>>> <tskamman@sbcglobal.net> 5/18/2007 3:03 PM >>>

I have some data from Sunroad but can't review it on my Blackberry.

Will send to you tonight.

Sent via BlackBerry from Cingular Wireless

Ted Sexton - RE: DRAFT Presentation to FAA re Centrum I at Montgomery Field

From: "Johnson Linda" <ljohnson@san.org>
To: "Shafer-Payne Angela" <apayne@san.org>, "Ted Sexton" <tsexton@sandiego.gov>
Date: 5/21/2007 3:42 PM
Subject: RE: DRAFT Presentation to FAA re Centrum I at Montgomery Field
CC: "Gosslin Amy" <agosslin@san.org>, "Wilschetz Keith" <kwilsche@san.org>

Ted and Angela,

The 2004 ALUCP update amended the Montgomery Field ALUCP to designate as incompatible any proposed development project that is not consistent with the FAA Part 77 requirements. The text of the plan (page 15) indicates that "Pursuant to FAA directive, the Part 77 height restrictions are incorporated into this ALUCP." This was effective on the date that the ALUC approved the ALUCPs (October 4, 2004).

Because we all thought that the countywide ALUCP update would be done by June 2005, the graphics in the 2004 ALUCP were not revised. It was intended that these changes and other more substantive changes to the plans would be reflected in the 2005 countywide update. Similarly, the City did not want to go through the amendment process for their general plan and zoning code twice (for the 2004 ALUCP update and 2005 update). However, the City was obligated by state law to send all proposed projects affected by the ALUCPs within their jurisdiction to the ALUC for a Consistency Determination between the time that the ALUC adopted the new ALUCP and the local jurisdiction revised their general plan and implementing ordinances to be consistent with that newly adopted ALUCP. The City's general plan and zoning ordinances were not consistent with either the previous versions of the ALUCPs or the newly adopted ALUCPs. The city refused to acknowledge that their plans and ordinances were inconsistent with the ALUCPs or that state law required them to submit projects to us in the interim period; therefore, proposed projects were not sent by the City to the ALUC for review. In mid 2006 City staff was directed to begin to send the ALUC projects for Consistency Determinations.

The new Montgomery Field ALUCP will not be adopted by July. We hope that we will have a final agreement (or not) with the ATAG on the policy content of the draft ALUCP by July; once that point is reached, we'll be able to prepare the draft plan and start the environmental process. At the earliest, I'd expect the public review period for the environmental document to begin in September, but this is still an unknown. I would say that we hope to have the Montgomery Field ALUCP adopted this year, but that is subject to the discussions and issues raised by the ATAG and the public during the community outreach process.

(This situation highlights why it is so important for the ALUC to provide clear recommendations to local jurisdictions on land use projects proposed around airports; and why state law requires local jurisdictions to send proposed projects to the ALUC for consistency determinations during the interim period between ALUCP adoption by the ALUC and the local jurisdiction revising its plans and zoning ordinances to be consistent with that revised ALUCP. Had we insisted that the City comply with state law and send projects around their airports to the ALUC for review during this interim period, we might have been able to have had a more collaborative discussion before the building was built – even if our position was that the ALUC could not take an action because this particular project site was outside the AIA. In the long run, I don't think the City was well served by our attempts to avoid controversy and "be nice".)

Please let me know if you need anything else.

Linda

From: Shafer-Payne Angela
Sent: Monday, May 21, 2007 10:48 AM
To: 'Ted Sexton'
Cc: Gosslin Amy; Johnson Linda; Wilschetz Keith
Subject: RE: DRAFT Presentation to FAA re Centrum I at Montgomery Field

Ted,

I would like Linda's input, but I don't believe the 2004 Montgomery Field ALUCP update modified the Part 77 requirements as indicated on your slide 4. Also, we may have completed our work with the ATAG for Montgomery Field by July, but certainly would not have a new ALUCP by July.

Angela

From: Ted Sexton [mailto:tsexton@sandiego.gov]
Sent: Friday, May 18, 2007 4:07 PM
To: Shafer-Payne Angela
Cc: Gosslin Amy; Johnson Linda
Subject: DRAFT Presentation to FAA re Centrum I at Montgomery Field

My Gang:

Here is a DRAFT briefing to Kevin Haggerty (FAA Obstruction Evaluation Service Manager) skd for Tuesday in Dallas by City's Jim Barwick and little Teddy Sexton.

Please review --more for your info than edit, but all corrections and improvements most welcome.

Ted Sexton - DRAFT Presentation to FAA (Obstruction Evaluation Service) re: Sunroad Centrum I Buiding, S.D. CA

From: Ted Sexton
To: tstory@sunroadenterprises.com
Date: 5/21/2007 5:09 PM
Subject: DRAFT Presentation to FAA (Obstruction Evaluation Service) re: Sunroad Centrum I Buiding, S.D. CA

Tom:

Attached please find the Draft presentation reflecting the Company s/city latest discussions on building height/dimensions modifications.

Thanks

Ted

Ted Sexton - DRAFT Presentation to FAA (OES) re Centrum I building in S.D. CA

From: Ted Sexton
To: brian.armstrong@FAA.gov; karen.mcdonald@FAA.gov
Date: 5/21/2007 5:25 PM
Subject: DRAFT Presentation to FAA (OES) re Centrum I building in S.D. CA

Brian/Karen:

Here is the presentation to Kevin Haggerty skd for Tuesday in Dallas.

I will brief you on the results ASAP after the meeting.

Thanks

Ted

From: <Karen.McDonald@faa.gov>
To: "Ted Sexton" <tsexton@sanidiego.gov>
Date: 5/21/2007 5:30:36 PM
Subject: Re: DRAFT Presentation to FAA (OES) re Centrum I building in S.D. CA

Thank you

KAREN L. MC DONALD
Los Angeles OES
310 725-6557

e-file 7460-1 on-line @ public web <http://oeaaa.faa.gov>
and
register for electronic notification of public OE notices

#13

Ted Sexton - Please disregard any previous e-mails on this subject. I'm new to Goupwise and tranmitted my DRAFT.

From: Ted Sexton
To: brian.armstrong@FAA.gov; bruce.beard@FAA.gov;
eric.vermeeren@FAA.gov; george.w.resse@FAA.gov ;
jbarwick@sandiego.gov; john.C. urquhart@FAA.gov;
kevin.haggerty@FAA.gov; mtussey@sandiego.gov;
tom.dray@FAA.gov
Date: 5/30/2007 1:40 PM
Subject: Please disregard any previous e-mails on this subject. I'm new to
Goupwise and tranmitted my DRAFT.

Please disregard any previous e-mails on this subject. I'm new to Goupwise and tranmitted my DRAFT. Here is the final message.

TO ALL:

On behalf of the City of San Diego and the Airport Authority, please let us thank you for stopping your busy day to help think through, then act, to remedy our flight obstruction situation here at Montgomery Field Airport. Please understand our primary motivation is threefold: (1) to eliminate any public perception of a hazard to flight safety, (2) restore public confidence in the flight operations at Montgomery Field and (3) improve the capacity and efficiency of the airfield. I believe the actions we are taking accomplished all three objectives. Here is what we seek, with your concurrence:

1. Near Term: Remove authorization for aircraft circling north of the Runway 5/23 quadrant (permits circling north to Runway 23 and south to Runways 5 and 10L
2. Near Term: Elevate VFR pattern altitude for 10L (left pattern) from present 800'AGL to 1,000'AGL (same as for other runways)
3. Near Term: Amend MYF course rules to require aircraft

on downwind entry for 10L to cross west of Highway 163 prior to turning base leg (coordinate with airport operator for including info in airport flight publications) Also, consider requiring aircraft in touch and go pattern 28R (right hand pattern) to cross Highway 163 prior to turning downwind (liaison with MYF ATCT for this proposal being worked May 30.

4. Long Term: Request Agency approval for installation of RNAV (GPS) Instrument Approach Procedure for 10L (seek LPV minimums, if feasible)

Thank You and we will be in communication with you throughout the week of May 29 to finalize the plan.

Ted Sexton (Airport Authority)& Mike Tussey (City Airports)

Ted Sexton - Review of proposed change of flight procedures at MYF

From: Ted Sexton
To: tom.dray@FAA.gov
Date: 5/31/2007 10:47 AM
Subject: Review of proposed change of flight procedures at MYF
CC: mtussey@sandiego.gov

Tom:

Thanks so much for looking over the City's proposal to modify local flight procedures at MYF and for taking the time to show me the Tower perspective (and your own). Please know we are on a timeline with OES on their review on the proposed changes and the proposal is being worked by John Urquhart in Flight Procedures in Seattle and George Reese in LA. Mike Tussey and I have briefed the ADO (Brian Armstrong and his team, as well).

Thanks and please call me at 619.890.5829 (Cell) with your thoughts, when convenient.

Ted

**AIR NAVIGATION HAZARD
ELIMINATION PROPOSAL
SUNROAD CENTRUM 12 OFFICE BUILDING
San Diego, CA**

Presented by: Jim Barwick, Director, Real Estate Assets,
City of San Diego, CA
Ted Sexton, Vice President, Regulated
Operations, San Diego County Regional
Airport Authority

1

Purpose of Proposal

- Ensure safest possible operating conditions exist at Montgomery Field Airport
- Restore public and user confidence in Montgomery Field flight operations and airspace management
- Ensure the orderly development of the airport and the community surrounding the airport
- Avoid unduly constraining airfield capability or reducing service levels

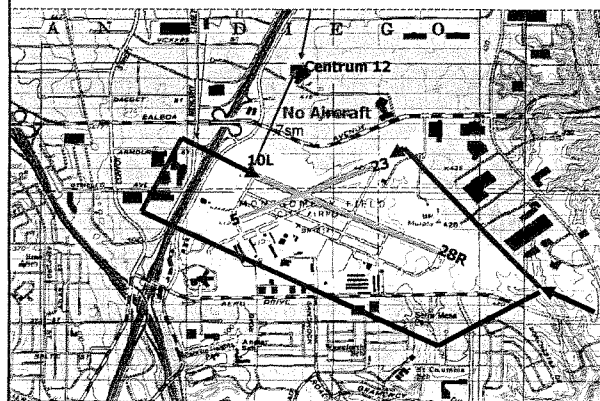
2

**Summary of Remedial Airspace
Actions at MFY (Interim)**

- Modify Flight Procedures to restrict circling approaches north of Runway 5/23
- Continue authorization to circle to land Runway 23
- Continue authorization to circle south of Airport to land Runways 5 and 10L
 - Circling south currently authorized by FAA but not used
 - New procedure expected to be used less than 2% of annual operations

3

MYF Circling Approaches Runways 5/23 and 28R/10L



1

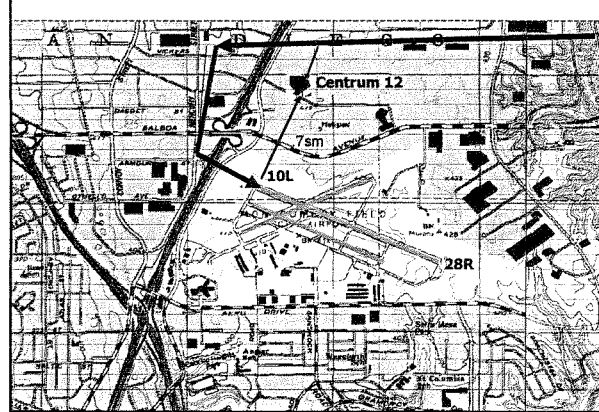
#16

Summary of Remedial Airspace Actions at MFY (Permanent)

- Require VFR (Visual Flight Rules) arrival aircraft to cross Hwy 163 prior to turning base to land Runway 10L
- Elevate VFR pattern altitude for 10L (right hand pattern) from 800'AGL to 1,000AGL
 - Ensures maximum safe separation between aircraft and obstructions to the north

5

MYF North VFR Downwind Entry for Runway 10L



Summary of Remedial Airspace Actions at MFY (Long Term)

- Partner with FAA to install straight-in Instrument Approach Procedure to Runway 10L
 - Provides airport with significant increase to airfield capability
 - Eliminates need for circling approaches to 10L

7

City of San Diego Flight Safety Improvements at Montgomery Field Airport

Prepared for: Office of the Mayor
Prepared by: Real Estate Assets Department

1

Summary of Obstruction Hazard Situation Montgomery Field Airport

- Building obstruction exists north of the Airport determined by FAA to be a "hazard to air navigation"
- City has put in place two separate remedies:
 1. Reduce the building height through legal means –Anticipate a far-reaching legal process taking years to resolve
 2. Clear the airspace surrounding the building by removing aircraft operations in its immediate vicinity – Near Term and Long Range Plan

2

Near Term Plan to Improve Flight Safety at Montgomery Field Airport

- City, as airport owner/operator, has coordinated with the FAA to implement immediate flight safety improvements by slightly modifying local flight procedures
 - Provides for greater safety margins in good weather and during instrument conditions

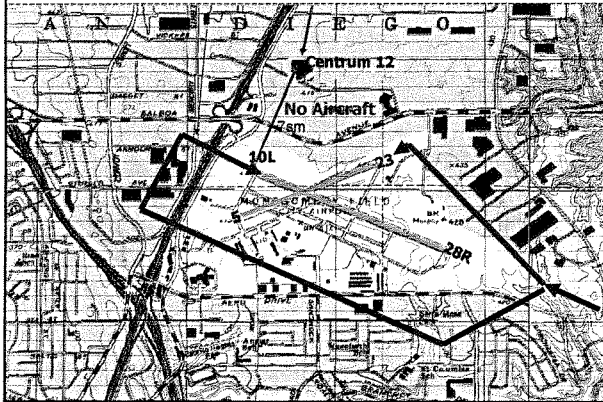
3

Summary of Flight Safety Improvements at Montgomery Field Airport (Near Term)

- Modify instrument procedures to restrict circling approaches north of Runway 5/23
- Continue authorization to circle to land Runway 23
- Continue authorization to circle south of Airport to land Runways 5 and 10L
 - Circling south currently authorized by FAA but very infrequently used
 - This procedure will be used less twice per day (annual average)—minimal impact on surrounding community

4

MYF Circling Approaches Runways 5/23 and 28R/10L

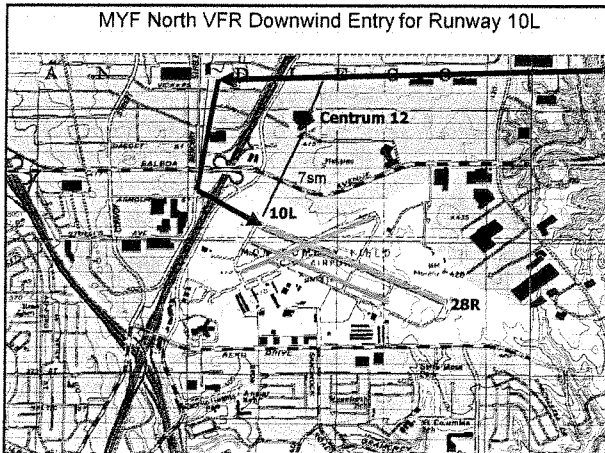


Summary of Flight Safety Improvements at Montgomery Field Airport (Near Term)

- Require VFR (Visual Flight Rules) arrival aircraft to cross Hwy 163 prior to turning base to land Runway 10L
- Elevate VFR traffic pattern altitude for 10L/28R from 800'AGL to 1,000'AGL
 - Ensures maximum safe separation between aircraft and obstructions to the north

6


MYF North VFR Downwind Entry for Runway 10L



Summary of Flight Safety Improvements at Montgomery Field Airport (Long Term)

- Partner with FAA to install straight-in Instrument Approach Procedure to Runway 10L
 - Provides airport with significant increase to airfield capability
 - Eliminates need for circling approaches to 10L
 - Needs to be studied for:
 - operational feasibility
 - environmental and community impacts

8



Benefits of City Program to Modify Flight Procedures at Montgomery Field Airport

- Ensures safest possible operating conditions exist at Montgomery Field Airport
- Restores public and user confidence in Montgomery Field flight operations and airspace management
- Permits the orderly development of the airport and the community development north of the airport
- Avoids unduly impacting the south community
- Avoids negative impacts on airfield capability or on aircraft operators

9



Actions taken by City and FAA

- FAA endorses all proposed flight safety improvements and has placed City request for new instrument procedure in queue for installation (18 months to two years)
- Airport to meet with airport user groups to brief aircraft operators and community stakeholders on impacts

10

AIR NAVIGATION HAZARD
ELIMINATION PROPOSAL
**SUNROAD CENTRUM 12 OFFICE
BUILDING**
San Diego, CA

Presented to: Kevin Haggerty Manager, Obstruction Evaluation/Airport
Airspace Analysis (OE/AAA), Federal Aviation Administration

Presented by: Jim Barwick, Director, Real Estate Assets, City of San Diego, CA
Ted Sexton, Vice President, Regulated Operations, San Diego
County Regional Airport Authority

1

Purpose of Proposal

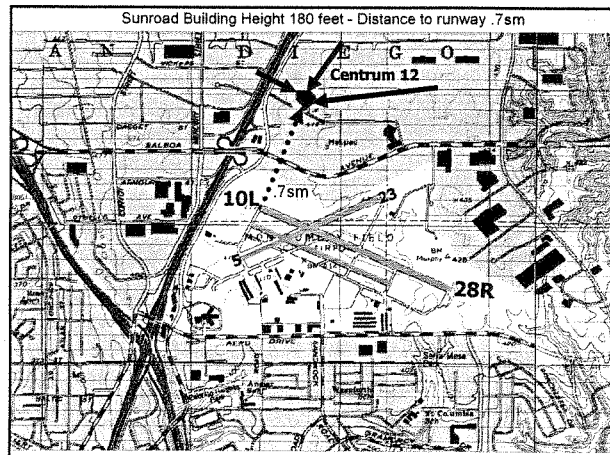
- Ensure safest possible operating conditions exist at Montgomery Field Airport
- Restore public and user confidence in Montgomery Field flight operations and airspace management
- Ensure the orderly development of the airport and the community surrounding the airport
- Avoid unduly constraining airfield capability or reducing service levels

2

Issue Summary

- Facility located .7 sm north of Montgomery Field Airport in San Diego California
- Determined to be an obstruction amounting to a hazard by FAA-OES (2006-AWP-4601-OE)
 - Building height of 180 feet AGL penetrates obstacle clearance surface for circling approaches to the airport
 - Building penetrates FAR Part 77 VFR Horizontal Surface by approximately 20 feet

3



Background and Current Status

- Builder relied on consultant advice ("grandfathered") and city permits in determining permissible height of building
- City jurisdiction did not seek an airport land use compatibility determination (FAA Height Limitation) because:
 - MYF Comprehensive Land Use Plan (CLUP) -- adopted 1984/Amended 1996 -- had facility located outside MYF Airport Influence Area (AIA)
 - City Airport Environs Overlay Zone mirrored CLUP--no height restrictions imposed on property

5

Background and Current Status (cont.)

- Project Environmental Impact Report (EIR) underwent thorough public review process - no adverse comments regarding height or proximity to airport operations
- All respondents favorably endorsed project at 180 feet AGL
 - Community Planning Groups
 - Caltrans Bureau of Aeronautics
 - Airport Advisory Committee
 - U.S. Military
 - Area residents who provided comment
- City Planning Commission recommended approval, as proposed, and City certified EIR with building height at 180 feet AGL
- February 2006 City approved Substantial Conformance Review (SCR) and in March 2006, issued building permit (foundation and frame) at 180 feet AGL

6

Key Regulatory Events in 2006

- April 2006 FAA reviewed Aeronautical Airspace Case Study (2006-AWP-1638-OE) and issued presumed hazard determination at 180 feet
- June 2006 FAA reviewed Aeronautical Airspace Case Study (2006-AWP-3876-OE) and issued a no hazard determination at 160 feet
- July 2006 City issued final Building Permit for completion of the building at 180 feet
- August 2006 FAA reviewed Aeronautical Airspace Case Study, Form 7460-2, Notice of Completion (2006-AWP-4601-OE) and issued final determination of hazard at 180 feet
- October 2006 City issues "Stop Work Order" based on alleged violation of Federal Obstruction Standards (FAR Part 77) and presumed risk created by "Public Nuisance"

7

Current Issue Status

- Building work authorized only on lower floors
- No building occupancy permit issued
- Matter in litigation between City and Sunroad Enterprises
- Circling Minimums for MFY Minimum Descent Altitude (MDA) raised from 880 MSL to 960 MSL -- Flight operations unaffected

8

Issue Resolution Proposal Builder Actions

- Builder will modify building roof size and maximum height
 - Remove architectural design element and parapet –reduces aerial footprint and lowers 86% of building elevation to 166.3 feet
 - Lower mechanical penthouse area (remaining 14% & highest area of obstruction) by two feet to 178 feet
- Cost to Builder--@ \$1.0 million

9

Issue Resolution Proposal Builder Actions

- Builder will partner with Airport operator (City) to fund and install Instrument Approach Procedure for 10L Cost – approx. \$1.3 million (Total)
- Builder will grant aviation easement to City for all airspace above building and future office building projects
- Builder will submit all future projects for aeronautical study under FAR Part 77 and abide by determination

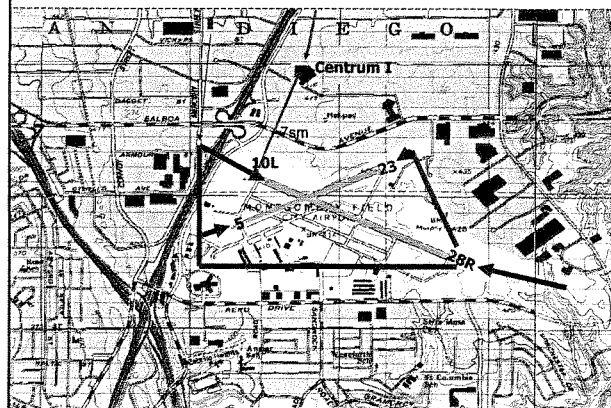
10

Issue Resolution Proposal City of San Diego

- City will partner with FAA to modify instrument approach procedures for 10L to eliminate aircraft circling north of runway. Aircraft will be authorized to circle south of runway to land 10L/28R
 - Procedure removes aircraft from adjoining airspace during circling approaches (estimated less than three percent of annual operations)
 - Maintains landing capability during instrument conditions
 - Recommend present circling approach weather minimums be retained

11

MYF Circling Approaches Runways 5/23 and 10L

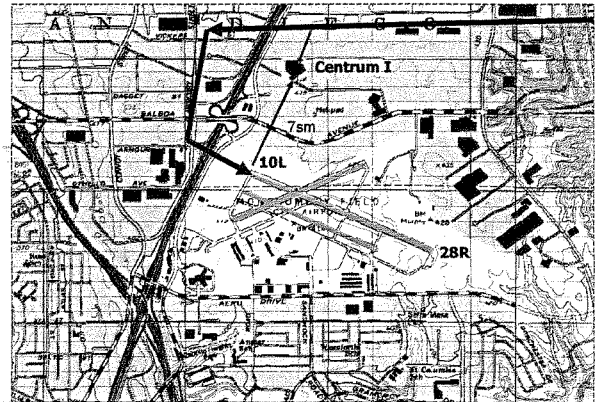


Issue Resolution Proposal City of San Diego

- City proposes to modify VFR arrival procedures to require aircraft cross Highway 163 prior to turning final for 10L
- Similarly requires aircraft in Touch & Go pattern 10L/28R to cross Highway 163 prior to turning downwind
 - De-conflicts VFR aircraft with buildings to north
 - Notify airmen through permanent NOTAM, Airport Field Directory (AFD) and Automated Terminal Information System (ATIS) recordings

13

MYF North VFR Downwind Entry for Runway 10L



Issue Resolution Proposal (cont)

- City will develop Capital Improvement Project (CIP) with Sunroad funding and partner with FAA to install navigation equipment for straight-in approach to 10L
- City has incorporated FAR Part 77 criteria and notification requirements in its public permitting process
- City is referring all project applications meeting FAR Part 77 criteria (within AIA) to the Airport Land Use Commission for consistency determinations
- City/Community/ALUC to finalize draft ALUCP policy decisions for MYF scheduled for summer of 2007
- Specifically, City will not approve building permits on the remaining Sunroad property above 160 feet, or as determined by FAA
- City will work closely with FAA on aeronautical case studies submitted for both Montgomery and Brown Field Airports to avoid repetition of this situation

15

Summary of Benefits

- Operational risk factors well within FAA standards
- Flight safety margins restored
- Builders put on notice to fully comply with federal airspace notification requirements and respect FAR Part 77 surfaces
- City's internal processes improve and coordination with Land Use Authority strengthens – no repeat of this occurrence
- City moves forward with improvements to MYF infrastructure and orderly development of community assets
- Increased public trust in City & Land Use Authority, Raises confidence in FAA decision making

16



Next Steps - FAA

- City participates with FAA airspace planners to modify local airspace procedures at MYF
- City/FAA confer on aeronautical airspace case study to ensure new flight conditions meet FAA guidelines on safe operating conditions at airport
- City commences planning work for new Instrument Approach Procedure for 10L

17



MYF Issue Resolution Proposal

Questions or Comments?

18

**BACKGROUND
SIGNIFICANT CORRESPONDENCE**

**Mayor's Office
City Attorney's Office
SD Airports Advisory Committee
Airport Authority
Sunroad's lawyers**



Memorandum

June 11, 2007

TO: Honorable Members of the City Council

FROM: Mayor Jerry Sanders

SUBJECT: Centrum 12 Office Building Update

I want to take this opportunity to update you on some developments regarding the Centrum 12 office building near Montgomery Field.

Public safety has and always will be my first priority. As such, I vigorously support the City's prosecution of the case against Sunroad so that the Centrum 12 office building is reduced in size to 160 feet and no longer poses a danger to the public. It's my job as mayor to consider all options available to the City as the operator of Montgomery Field. One of those options would have taken an increased number of planes over a residential community. In the end, it was my decision not to pursue this approach because I did not want to increase air traffic over a residential community and I also did not want to hurt the City's case against Sunroad.

With that in mind, let me now explain the various factors that went into my decision. On May 18th, I sent a letter to officials at the Federal Aviation Administration (FAA) and the California Department of Transportation; you were copied on this letter. Two of the paragraphs in the letter read as follows:

"I support your findings that the building must be reduced in size so that it is no longer a hazard to public safety. As Ms. (Karen) McDonald (an FAA official) is aware, my staff has put forward a proposal that will reduce the building height to 163 feet with the exception of the mechanical equipment enclosure room which would remain at 180 feet. The equipment enclosure room constitutes 15% of the overall roofline. The proposal also includes working with the FAA to discontinue circling instrument approaches north of the field and allowing aircraft to circle to the south. Additionally, visual course rules would be modified to ensure that aircraft remain well clear of the building. In the long-term, the City would coordinate with the FAA and the developer to fund and install a straight-in instrument approach procedure to Runway 10 Left. All of these changes are designed to de-conflict aircraft operations and the building.

“I would encourage you to consider this proposal, but I also want to make clear that I will support whatever your ultimate judgment is regarding appropriate remedial actions.”

As a result of my letter, members of my staff and an executive on loan to the City from the San Diego Regional Airport Authority, Ted Sexton, met with FAA officials to discuss the various options that would be available to the City.

The FAA told the City’s representatives that it would not support any intrusion into the airspace above 160 feet. It also told our representatives that it would heartily endorse clearing the airspace around the Centrum 12 office building. In order to do this, during times of adverse weather conditions (considered to be only ½ of 1% of all landings), the City would have to make exclusive a landing pattern that would take aircraft south of the field. Albeit rare, an acceptable landing pattern in existence now and only used in adverse weather conditions, exclusively circling aircraft south of the field would increase air traffic over the residential portions of Serra Mesa. (Ninety-nine percent of the time aircraft land “straight in,” approaching the field from the east and landing to the west.) I do not believe that this is an acceptable option. The formalization of this option would also mean that the Centrum 12 office building would no longer pose a hazard to aviation since it would no longer be a part of the approach to Montgomery Field. In my opinion, the exclusive use of a circle south approach would harm the City’s case against Sunroad.

As mayor, it’s my job to consider all options that further the goals of our city and its citizens. In the end, I have decided not to formalize, for exclusive use, a circle south approach. I did not want to increase the air traffic over Serra Mesa and I did not want to harm the City’s court case against Sunroad. The status quo will remain in place, meaning that pilots, in adverse weather (defined as Santa Ana winds from the east with low cloud cover that makes a “straight in” landing from the east difficult) conditions will have the option to circle north or south of the field and land from the west to the east. Should pilots choose to circle north, the FAA has lifted the altitude at which they have to fly from approximately 880 feet to 960 feet.

My decision makes the City Attorney’s prosecution of the case against Sunroad all the more important; I wholeheartedly support the case. I will not be satisfied until the Sunroad building is reduced in height to 160 feet. No one that broke the law should be accommodated and that’s why I did not want to make exclusive a landing pattern – albeit in limited cases – that would weaken the City’s case.

Loaned Executive Program

In late March of this year, the San Diego Regional Airport Authority entered into a services agreement with the City of San Diego to lend the City the services of Authority vice president Ted Sexton for 6 months from April 1 – September 30, 2007. Loaned executives are a best practice in the public sector. The City is receiving Mr. Sexton’s services for free. The City has had 3 loaned executives: one from the County, one from the Port and Mr. Sexton from the Airport Authority. It’s a good thing. We get the services of very competent professionals for free.

As you know, the City owns and operates two airports: Brown and Montgomery Fields. Mr. Sexton was brought on board, in large part, to help the City determine how these airports could be operated more effectively and whether or not the City should be in the airport business at all. Mr. Sexton's responsibilities while at the City are clearly articulated in agreement between the agreement and the City; I have attached a copy of that agreement to this memo. While an integral part of our discussions with the FAA, Mr. Sexton was not brought on board to manage the Sunroad building issue.

Mr. Aguirre has alleged that the service agreement that Admiral Froman signed on behalf of the City with the Airport Authority is "illegal." We wholeheartedly disagree. Mr. Aguirre and I will just have to agree to disagree on this issue. The services agreement does not require the City Attorney's review or approval. Moreover, the City Attorney was aware of the arrangement with the Airport Authority. This issue was discussed at a Rules Committee meeting in early April at which Deputy City Attorney Catherine Bradley was present. No objection was raised at the meeting when the arrangement was discussed and to date my office has not received any correspondence regarding the loaned executive program.

I will keep you apprised of any additional developments on this issue.

Thank you.

cc: City Attorney
Andrea Tevlin, Independent Budget Analyst
Ronne Froman, COO

AGREEMENT
BETWEEN
THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY
AND
THE CITY OF SAN DIEGO
FOR EXECUTIVE LOAN OF SERVICES OF
AIRPORT AUTHORITY EMPLOYEE
THEODORE ("TED") C. SEXTON

AGREEMENT NO. _____

THIS AGREEMENT, made and entered into this 31st day of March, 2007, by and between the SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, a local governmental entity of regional government (hereinafter "Authority") and the CITY OF SAN DIEGO, a municipal corporation (hereinafter "City"); and

RECITALS

WHEREAS, the City is conducting a special project to review the management and facility development options of its City-owned airports; and

WHEREAS, the City is preparing modifications to its General Plan that address land use compatibility policies that directly impact the delivery of aviation services to the region; and

WHEREAS, the Authority, is charged by its enabling legislation to plan for facility development and siting opportunities available in the region to support long term aviation demand; and

WHEREAS, the Authority is preparing a comprehensive airport land use plan for the region and developing standards and guidelines for use in adopting an airport land use compatibility plan for airports in the region, including San Diego International Airport and Brown and Montgomery Field Airports, as required by state law; and

WHEREAS, Authority employee Ted Sexton (hereinafter "Employee") has expertise in the area of airport management and development, federal and state regulatory controls, and land use compatibility planning; and

WHEREAS, the Authority has agreed to loan Employee to the City to participate in the City's deliberations on aviation matters, strategy formulation, and regulatory interface to thereby assist the City and the Authority to evaluate their potential options in light of the City's project;

NOW, THEREFORE, in consideration of the recitals, terms, and conditions stated herein, IT IS MUTALLY AGREED AS FOLLOWS:

Sec. 1. Scope of Services. Authority agrees to provide City with the executive loan of the services of Employee, in accordance with "Attachment A, Scope of Services", a copy of which is attached hereto and incorporated herein by this reference.

Sec. 2. Term. This Agreement shall commence on APRIL 1, 2007, and shall terminate on SEPTEMBER 30, 2007, subject to earlier termination as provided herein.

Sec. 3. Compensation. Authority shall continue to pay Employee's salary and benefits during the term of this Agreement. City shall reimburse Authority for all out-of-town travel and other incidental and necessary expenses in the performance of Employee's duties for the City, including daily parking fees. City shall provide workspace and equipment for Employee as further described in "Attachment A, Scope of Services". No monetary compensation beyond reimbursement of Employee's expenses shall be provided by the City for services rendered by Employee.

Sec. 4. Records. In accordance with generally accepted accounting principles, City shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to inspection by Authority at all reasonable times in the City of San Diego. Such records shall be maintained and kept for at least three (3) years after the termination of this Agreement, the completion of services to be performed under this Agreement, or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

City understands and agrees that Authority, at all times under this Agreement, has the right to review project documents and work in progress and to audit financial records, whether or not final, which City or anyone else associated with the work has prepared or which relate to the services described in Attachment A" pursuant to this Agreement, regardless of whether such records have previously been provided to Authority. City shall provide Authority at City's expense a copy of all such records within five (5) working days of a written request by Authority. Authority shall also have the right to inspect at reasonable times the City's office or facilities, at which location Employee is engaged in the performance of services pursuant to this Agreement. City shall, at no cost to Authority, furnish reasonable facilities and assistance for such review and audit.

Sec. 5. Sub-consultants and Subcontractors. No sub-consultants or subcontractors are authorized under this Agreement.

Sec. 6. Compliance. In performance of this Agreement, City shall comply with the California Fair Employment and Housing Act ("FEHA"), the Americans with Disabilities Act ("ADA"), and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. City shall comply with the prevailing wage provisions of the California Labor Code, the Political Reform Act provisions of the California Government Code, as applicable, as well as all applicable federal and state laws.

Sec. 7. Assignments. City shall not assign or transfer, directly or indirectly, voluntarily or involuntarily, any of its rights, duties, or obligations under this Agreement, in whole or in part, without the express prior written consent of the Authority's President/CEO. Any attempted or purported assignment of any right or obligation pursuant to this Agreement, without consent, shall be void and of no effect.

Sec. 9. Insurance Requirements. The Authority understands that the City is a self-insured municipal agency.

Sec. 10. Independent Review. Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.

Sec. 11. Integration and Modification. This Agreement contains the entire agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modification, amendment or alteration of this Agreement shall be valid unless it is in writing and properly executed by the parties hereto.

Sec. 12. Ownership of Records. Any and all materials and documents, including without limitation, drawings, specifications, computations, designs, plans, investigations and reports, prepared by Employee pursuant to this Agreement, shall be the property of City from the moment of their preparation and the Employee shall deliver such materials and documents to City whenever requested to do so by City. However, Employee shall have the right to make duplicate copies of such materials and documents for his own file, or for other purposes as may be expressly authorized in writing by City. Said materials and documents prepared or acquired by Employee pursuant to this Agreement (including any duplicate copies kept by the Employee) shall not be shown to any other public or private person or entity, except the Authority as authorized by City. Employee shall not disclose to any other public or private person or entity any information regarding the activities of Employee, except as expressly authorized in writing by City or Authority. The parties recognize the California Public Records Act may apply to and govern the rights and obligations expressed in this section. Notwithstanding the provisions of this section, each party acknowledges it must fully and legally comply with the applicable provisions of said Act.

Sec. 13. Termination. In addition to any other rights and remedies allowed by law, the President/CEO of the Authority or the Chief Operating Officer of the City may terminate this Agreement at any time with or without cause by five days prior written notice to City of such termination and specifying the effective date thereof. In the event of termination, all finished or unfinished documents and other materials shall be delivered to City.

Sec. 14. Dispute Resolution. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed upon, and if such dispute is not otherwise time barred, the parties agree prior to initiating any litigation or arbitration to first try in good faith to settle the dispute amicably by mediation conducted in the City of San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant agreements or resolutions shall be documented and may be used as the basis for an amendment or directive as appropriate.

If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration conducted in the City of San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the arbitration award shall be non-binding and advisory only. Any resultant agreement or resolution shall be documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or either party to this Agreement, both parties to this Agreement agree to join in and become parties to the arbitration proceeding.

The foregoing mediation and arbitration procedures notwithstanding, all claim filing requirements of this Agreement and the California Government Code shall remain in full force and effect regardless of whether or not such dispute avoidance and resolution procedures have been implemented, and the time periods within which claims are to be filed or presented to the Authority

Clerk, the Government Code, or otherwise, shall not be waived, extended or tolled thereby. If a claim is not timely filed or presented, such claim shall be time barred and the above dispute avoidance and resolution procedures, whether or not implemented or then pending, shall likewise be time barred as to such claims.

Sec. 15. Captions. The captions by which the paragraphs or sections of this Agreement are identified are for the convenience of the parties only and shall have no effect upon its interpretation.

Sec. 16. Required Signatures. It is an express condition of this Agreement that it shall not be complete, binding or effective until signed by the President/CEO or an authorized designee on behalf of the Authority and by authorized representative of the City.

Sec. 17. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery when delivered personally, (b) by overnight courier upon written verification of receipt, or (c) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth below, or such other address as either party may specify in writing:

If to the Authority:

Thella F. Bowens, President/CEO
San Diego County Regional Airport Authority
P.O. 82776
San Diego, CA 92138-2776
Tel.: (619) 400-2444; FAX: (619) 400-2448

If to the City:

Ronne Froman, Chief Operating Office
City of San Diego City Administration Building
202 C St., 11th Floor
San Diego, CA 921 01
Tel.: (619) 236-6330; Fax: (619) 236-7153

Sec. 18. Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder shall remain in full force and effect, and shall in no way be affected, impaired or invalidated.

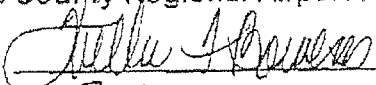
IN WITNESS WHEREOF, CITY and Authority have caused this Agreement to be executed by their authorized representatives, all as of the day and year first hereinabove written.

///

///

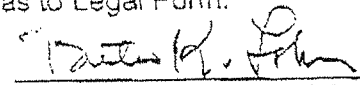
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San Diego County Regional Airport Authority

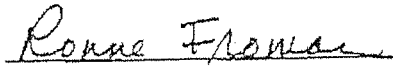
Signature: 

Print Name: TAELLA F. BOWENS

Approved as to Legal Form:

By: 
Office of the General Counsel

City of San Diego

Signature: 

Print Name: RONNE FROMAN

**Office of
The City Attorney
City of San Diego**

MEMORANDUM

DATE: June 8, 2007

TO: Michael J Aguirre, San Diego City Attorney

FROM: Kevin Christensen, Investigator

SUBJECT: Charter Section 40 Request

This is a request made under the provisions of San Diego City Charter Section 40, which states that "The City Attorney shall have charge and custody of all the legal papers, books, and dockets belonging to the City pertaining to his office, and, upon a receipt thereof, may demand and receive from any officer of the City any book, paper, documents, or evidence necessary to be used in any suit, or required for the purpose of the office." The City Attorney requests the following:

- a) Immediate access to any and all records prepared, owned, or retained by Ted Sexton during his work for the City of San Diego as provided in the "Agreement Between The San Diego County Regional Airport Authority And The City of San Diego For Executive Loan Of Services Of Airport Authority Employee Theodore ("Ted") C. Sexton" memorialized on 31 March 2007.¹ "Records" hereby includes, but is not limited to letters, memoranda, telephone log entries, visitor log entries, message receipts, notations of conversations, meeting notes, e-mail messages or other records on magnetic media, fax cover sheets, reports, statistics, calendar entries, permits, questionnaires, photographs, audio tape, film, and videotape. For the purpose of this request, "records" shall also include all materials and documents, included without limitation, drawings, specifications, computations, designs, plans, investigations and reports.

The "Agreement Between The San Diego County Regional Airport Authority And The City of San Diego For Executive Loan Of Services Of Airport Authority Employee Theodore ("Ted") C. Sexton" in Section 12 specifically states, "Ownership of Records. Any and all materials and documents, included without limitation, drawings, specifications, computations, designs, plans, investigations and reports, prepared by Employee [Theodore 'Ted' Sexton] shall deliver such materials and documents to the City whenever requested to do so by the City." Therefore, these documents fall under the purview of Charter Section 40 which provides the City Attorney "charge and custody" of any and all "book, paper, documents, or evidence," as stated above.

¹ Agreement Between The San Diego County Regional Airport Authority And The City of San Diego For Executive Loan Of Services Of Airport Authority Employee Theodore ("Ted") C. Sexton. See attached.

Michael J. Aguirre, City Attorney

June 8, 2007

Page 2

This is a formal request to have immediate access to this information on the morning of 8 June 2007. Please call me at (619) 236-6200 to arrange for a time this morning, 8 June 2007, to turn over the responsive documents.

Sincerely yours,

MICHAEL J. AGUIRRE, City Attorney

By

A handwritten signature in dark ink, appearing to read "Michael J. Aguirre". The signature is written in a cursive, flowing style.

Michael J. Aguirre
City Attorney



FOR IMMEDIATE RELEASE
June 7, 2007

Contact: Fred Sainz
858-442-8914

FACT SHEET

'LOANED EXECUTIVE' PROGRAM PROVIDES CITY WITH INVALUABLE EXPERIENCE AT NO COST

AIRPORT AUTHORITY'S LENDING OF TED SEXTON A 'BEST PRACTICE' FOCUSED ON OVERALL CITY AIRPORTS PLANNING

In late March of this year, the San Diego Regional Airport Authority entered into a services agreement with the City of San Diego to lend the City the services of Authority vice president Ted Sexton for 6 months from April 1 – September 30, 2007.

The City owns and operates two airports: Brown and Montgomery Fields. Mr. Sexton was brought on board, at no charge to the City, to help the City determine how these airports could be operated more effectively and whether or not the City should be in the airport business at all. Mr. Sexton's responsibilities while at the City are clearly articulated in agreement between the agreement and the City. Mr. Sexton was not brought on board to manage the Sunroad building issue.

- 'Loaned executive' programs are considered a best practice in the public sector. Traditionally they involve the lending of a highly experienced employee that the receiving agency could not otherwise hire. Their service is for a limited period of time or specific project.

This is the case in this situation. The City is receiving Mr. Sexton's services for free. Were it not for this agreement, the City would not be able to afford his services. Mr. Sexton possesses decades of experience in airport planning and will lend immeasurable assistance to the City in planning the future of its airports operations.

The City has had three loaned executives since Mayor Sanders took office: Rich Haas from San Diego County, who eventually joined the City; Tony Heinrichs from the Port Authority; and Mr. Sexton. The City received all of their services for free.

- The services agreement does NOT require the City Attorney's review or approval. The City is receiving the services of Mr. Sexton for free.
- The City Attorney was aware of this agreement and had no opinion on the issue until today.

On April 11, 2007, the Airport Authority's chairman, Alan Bersin, appears before the Rules Committee of the City Council and discussed the 'loaned executive' agreement. Deputy City Attorney Catherine Bradley at the meeting representing Mr. Aguirre and said nothing. No documents objecting to the loan have been received from the City Attorney's office to date.

Attachments: Services Agreement between City and Authority
Letter from Authority to City

SAN DIEGO AIRPORTS ADVISORY COMMITTEE
MEMORANDUM

DATE: June 6, 2007
TO: Mayor Jerry Sanders
FROM: San Diego Airports Advisory Committee
SUBJECT: AAC Motion

On Tuesday, June 5, 2007, the Airport Advisory Committee (AAC) held a special meeting and passed the following motion:

"Move to write the Mayor, FAA and Caltrans that the AAC opposes any proposal made to the FAA without seeking advice and counsel of neighbors and airport users represented on the AAC".

Respectfully Submitted,



ALAN FINK
Chairman

Copy to: Caltrans
FAA

SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY

P.O. BOX 82776, SAN DIEGO, CA 92138-2776
619.400.2400 WWW.SAN.ORG

June 5, 2007

The Honorable Jerry Sanders
City of San Diego
202 C Street, 11th Floor
San Diego, CA 92101

The Honorable Scott Peters
Council President
City of San Diego
202 C Street, MS #10 A
San Diego, CA 92101

Dear Mayor Sanders and Council President Peters:

I am writing to inform you of an inquiry made today by City Attorney Mike Aguirre in regard to an agreement between the City of San Diego and the San Diego County Regional Airport Authority (Authority). This inquiry concerns the Authority's decision to "loan" an executive member of the Authority's management team with expertise in airport management and development, federal and state regulatory controls, and land use compatibility planning to the City.

The Airport Authority Board and management staff continue to identify ways to better integrate aviation-related planning with planning performed by other local agencies. The decision to cooperate via a "loaned executive" assists in these efforts by temporarily sharing the expertise of a senior Authority staff member with the City. This employee, Ted Sexton, is on loan to assist City staff during the review of the management and facility development options of City-owned airports. He has extensive knowledge and experience with airports and how they operate.

The following is a list of some of the major functions that Mr. Sexton will perform under the terms of our March 31, 2007 agreement:

- Assist in the development of airport land use compatibility plans for City-owned airports and San Diego International Airport (SDIA)
- Coordinate with City staff to assist on effective and beneficial resolutions of issues related to the management and development of City airports
- Contribute to the final preparation of the City's General Plan as it relates to airports, airport land use plans, and other aviation issues
- Work with City finance staff to provide assistance in reviewing Federal Aviation Administration (FAA) grants, grant sponsorships, and compliance with grant assurances



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The Honorable Jerry Sanders
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- Work with City staff to identify issues relating to the FAA and Caltrans to facilitate increased communication and problem-solving between these and other agencies
- Assist the City and the Authority in identifying options to further the completion of airport land use compatibility plans for SDIA and Brown and Montgomery Field Airports

The Authority continues to pay Mr. Sexton's salary as his work facilitates the Authority's role as the Airport Land Use Commission for the San Diego region and assists in the development of a regional airport system.

In light of the City Attorney's inquiry, I want to assure you that this action complies with all Authority, state, and FAA policies and guidelines. As you are aware, no action by the Authority Board was required for this agreement and, therefore, there is no applicability of the Ralph M. Brown Act in this matter.

Please feel free to contact me if you have any questions or need additional information concerning this issue.

Sincerely,



Thella F. Bowens
President/CEO
San Diego County Regional Airport Authority

TFB/mk

MICHAEL J. AGUIRRE
CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO
MICHAEL J. AGUIRRE
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

June 1, 2007

Steven Shultz
Communications Director
San Diego Regional Airport Authority
P.O. Box 82776
San Diego, CA 92138-2776

Re: CALIFORNIA PUBLIC RECORDS ACT REQUEST

Dear Mr. Shultz:

This is a request for records pursuant to the provisions of the California Public Records Act as amended (Cal. Gov. Code § 6250, *et seq.*).

- a) I request copies of all records prepared, owned, used, received, or retained by Ted Sexton on the subject of "Sunroad Enterprises" and "Montgomery Field." This request includes all records regardless of form, including but not limited to letters, memoranda, telephone log entries, visitor log entries, message receipts, notations of conversations, meeting notes, e-mail messages or other records on magnetic media, fax cover sheets, reports, statistics, calendar entries, permits, questionnaires, photographs, audio tape, film, and videotape.
- b) This request includes all third party or carbon copied records received by Ted Sexton involving Sunroad Enterprise which include, but are not limited to, records to Jerry Sanders, James Waring, and Marcela Escobar-Eck. This request includes all records regardless of form, including but not limited to letters, memoranda, telephone log entries, visitor log entries, message receipts, notations of conversations, meeting notes, e-mail messages or other records on magnetic media, fax cover sheets, reports, statistics, calendar entries, permits, questionnaires, photographs, audio tape, film, and videotape.
- c) I request copies of all records prepared, owned, used, received, or retained by Ted Sexton on the subject of flight paths and air traffic circulation at Montgomery Field. This request includes all records regardless of form,

June 1, 2007

including but not limited to letters, memoranda, telephone log entries, visitor log entries, message receipts, notations of conversations, meeting notes, e-mail messages or other records on magnetic media, fax cover sheets, reports, statistics, calendar entries, permits, questionnaires, photographs, audio tape, film, and videotape.

- d) I request copies of all records owned or retained by Ted Sexton either sent to or received by San Diego Mayor Jerry Sanders, James Waring or Marcela Escobar-Eck. The time frame for these records is between May 1, 2006 and June 1, 2007. Specifically, I request records including the keywords: "flight path," "flight path modification," "path modification," "hazard," "FAA," "petition," "circulation," "Montgomery," "Sunroad," "Spectrum," "story," "Feldman," "Eck" or "Centrum."

This request reasonably describes identifiable records or information produced therefrom and I believe no express provision of law exists exempting the requested records from disclosure. Should your agency find any portion of any requested record exempt from release, I ask that you carefully consider the public interest served by the full disclosure of all requested records.

The requested records relate to an important issue in which the public has expressed an enormous amount of interest. The public interest in these records clearly outweighs all other interests. Therefore, I request that you release non-segregated copies of each of the requested records otherwise exempt under California Government Code 6254(a).

Should you find any portion of any requested record exempt from release, I ask that you exercise your discretionary authority to release the requested record in its entirety. If you decide against exercising your authority to release non-segregated copies of all requested records, Government Code Section 6257 requires that you release all reasonably segregable portions of the requested records. I reserve my right to challenge the withholding or deletion of any information.

If you decide to withhold any portion of any requested record, I ask that you provide me a list identifying what you have withheld. I also ask that you cite the specific exemption(s) being relied upon to withhold information. In addition, if you deny all or part of this request, Government Code Section 6256.2 requires that you provide the name and title or position of each person responsible for the denial of this request. Should you decide to withhold any information, Government Code Section 6256 requires that you notify me of the reasons for this determination no later than 10 days after receipt of this request. Government Code Section 6256.2 prohibits the use of the 10-day period, or any provisions of the Public Records Act, "to delay access for purposes of inspecting public records."

I also request any records that indicate, suggest, or otherwise identify the prior existence of other records related to my request that may have been destroyed or modified. California Government Code Section 14755(a) makes clear that "[n]o record shall be destroyed or

June 1, 2007

otherwise disposed of by any agency of the state" unless (1) the Director of the Department of General Services has determined that "the record has no further administrative, legal or fiscal value," and (2) "the Secretary of State has [also] determined that the record is inappropriate for preservation in the State Archives." The "willful removal" or "destruction" of agency records in violation of these statutory mandates can result in the imposition of criminal sanctions. [See, Cal. Gov. Code § 6200 (felony offense for destruction of records by "custodial officer") and Cal. Gov. Code § 6201 (misdemeanor offense for destruction of records by "noncustodial officers").]

Given the public interest in the requested records, I ask that you exercise your discretionary authority and waive all reproduction fees associated with my request. I seek this information because it is informative of your agency's operations and activities. I have no financial interest in the requested records.

This is a formal request to have this information delivered to the San Diego City Attorney by 10 a.m. on the morning of June 11, 2007. Should you require more time to meet the request, please call me at (619) 236-6200 to arrange for a date to turn over the responsive documents. Thank you for your assistance and cooperation with this matter.

Sincerely yours,
MICHAEL J. AGUIRRE, City Attorney

By



Michael J. Aguirre
City Attorney

MJA:kmc

Today, I have sent a letter to the FAA and CALTRANS supporting their findings that the building must be reduced in size. In my letter, I also inform both government agencies that I support the City Attorney's civil lawsuit against Sunroad.

I want to very clear differentiate the civil lawsuit against Sunroad regarding the top 20 feet of the building from the criminal complaint that Mr. Aguirre has brought against Mr. Story. Those are two entirely different issues. A judge has made his opinion known on the criminal complaint against Mr. Story. The civil matter is an entirely separate matter and is one that has not been heard yet by a judge.

While Mike Aguirre and I don't see eye to eye on every issue, I support his pursuit of this matter in a civil courtroom. As City Attorney, he has a lawful obligation to pursue this matter in accordance with the civil public nuisance mandate of State and local law on behalf of the City.

I have directed the Development Services Department to inform Sunroad that the City is reinstating the requirement of strict observance of the Stop Work order of October 27, 2006. No further work will occur on the top 20 feet of the building. That notice was served on the job site this morning by the city's chief building inspector.

Clearly something went wrong with our processes. The City failed to act in a timely manner. Our citizens deserve better, and I want to ensure that we review our processes so that this can never happen again.

I have directed the City's Chief Operating Officer, Retired Admiral Ronne Froman, to conduct a thorough investigation into the permitting process for this project. I have asked Admiral Froman to pay particular attention to the City's reaction -- or lack thereof -- to the concerns of the FAA. The result of her investigation will be that safeguards will be put in place so that this kind of mistake can never happen again.

When this matter came to my attention, I immediately directed staff not to permit any future buildings without the appropriate FAA clearances. That safeguard is now in place going forward. But our process review will examine the process holistically to ensure that everything is being done to avoid this kind of situation in the future.

I have told Admiral Froman that the investigation must be conducted on an expedited time frame so that proper controls are put in place. I would expect the investigation to be completed within a number of weeks so that any resulting safeguards can be instituted immediately. The products of the investigation will all be made public.

Within the last three weeks, my staff has put forward a proposal to the FAA that I am asking them to consider. The top of the building is framed by a faux architectural feature. If this feature were to be removed, the building's height would be reduced to 163 feet. The only remaining structure would be a mechanical equipment enclosure located in the center of the roof. The equipment enclosure room constitutes 15% of the overall roofline. The proposal also includes other technical changes designed to de-conflict aircraft operations and the building.

Whether or not this proposal satisfies the concerns of aviation safety will be determined by the FAA. I will respect the ultimate judgment of the FAA and will abide by their opinion.

Mistakes were clearly made within my administration regarding this project. I believe that they were mistakes of the mind and not the heart. My job is now to fix them so that this type of situation can't happen again.

###



JERRY SANDERS
MAYOR

May 18, 2007

Mr. Jeff Brown
Division of Aeronautics
CALTRANS
M.S. #40
1120 N. Street
PO Box 942873
Sacramento, CA 94273-0001

Ms. Karen McDonald
Air Traffic Airspace Branch
FAA
ASW-520
2601 Meacham Blvd.
Fort Worth, TX 76137-0520

Re: Compliance with FAA Notice of Hazard

Dear Mr. Brown and Ms. McDonald:

I am writing as the Mayor of the City of San Diego regarding the Sunroad Centrum 12 office building, which is being constructed near Montgomery Field Airport in San Diego.

It is apparent that the City failed to stop work on the project and prevent the building from reaching 180 feet after it knew of the FAA's concerns. I take full responsibility for that mistake and want to do everything within my power to correct it. I have initiated a thorough review of how the decisions that led to this situation were made so I can ensure that this will never happen again.

I support your findings that the building must be reduced in size so that it is no longer a hazard to public safety. As Ms. McDonald is aware, my staff has put forward a proposal that will reduce the building height to 163 feet with the exception of the mechanical equipment enclosure room which would remain at 180 feet. The equipment enclosure room constitutes 15% of the overall roofline. The proposal also includes working with the FAA to discontinue circling instrument approaches north of the field and allowing aircraft to circle to the south. Additionally, visual course rules would be modified to ensure that aircraft remain well clear of the building. In the long-term, the City would coordinate with the FAA and the developer to fund and install a straight-in instrument approach procedure to Runway 10 Left. All of these changes are designed to de-conflict aircraft operations and the building.

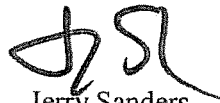
I would encourage you to consider this proposal, but I also want to make clear that I will support whatever your ultimate judgment is regarding appropriate remedial actions.

I am by this letter taking the following action:

1. I have directed the Development Services Department to inform Sunroad that the City is reinstating the requirement of strict observance of the Stop Work order of October 27, 2006. That notice was served this morning.
2. I support the City Attorney's civil lawsuit, and will support him in taking any and all necessary steps to fully enforce the civil public nuisance mandate of State and local law on behalf of the City.
3. I have directed the City's Chief Operating Officer, Retired Admiral Ronne Froman, to conduct a thorough investigation into the permitting process for this project, including the City's reaction, or lack thereof, to your concerns regarding the 180 foot height. Your cooperation in this inquiry will be critical to our reform efforts.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to be 'JS' with a stylized flourish.

Jerry Sanders
Mayor
City of San Diego

cc: Honorable Mike Aguirre, City Attorney
Honorable Members of the San Diego City Council
Ronne Froman, City Chief Operating Officer
Jim Waring, Deputy Chief Operating Officer
Marcela Escobar-Eck, Director, Development Services Department
Jim Barwick, Director, Real Estate Assets Department

December 5, 2006

Steven M. Strauss

T: (858) 550-6006
sms@cooley.com

Mr. James T. Waring
Deputy Chief Operating Officer
Land Use and Economic Development
Office of the Mayor
City of San Diego
202 C Street, 9th Floor
San Diego, CA 92101

Re: Notice to Stop Work dated October 27, 2006, with Respect to Permit Number 30331 for
Job Address 8620 Spectrum Center Blvd. (the "Notice")

Dear Jim:

We are writing to confirm the following matters with respect to the Notice as agreed between our client, Sunroad Centrum Office I, L.P. ("Sunroad"), and the City of San Diego (the "City") with respect to Sunroad's Centrum 1 building (the "Building"):

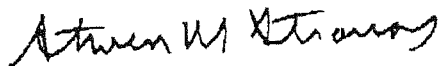
1. The City hereby lifts the Notice and grants to Sunroad the authority to resume work with respect to the top 17 feet of the Building until the earlier to occur of (a) completion of the Building, including without limitation issuance of a certificate of occupancy, or (b) final determination and resolution of the FAA matter.
2. Sunroad accepts and acknowledges that any work performed from and after the date hereof with respect to the top 17 feet of the Building is at Sunroad's own risk and without any claim against the City.
3. The City shall reasonably cooperate with Sunroad with respect to the matters relating to a new or revised Instrument Approach Procedure as outlined in numbered items (1) through (5) of the December 1, 2006, letter to you from Chevalier, Allen & Lichman.
4. Except as set forth elsewhere in this letter, each of Sunroad and the City reserves all other rights and remedies with respect to the Notice as of the date hereof.

Mr. James T. Waring
December 5, 2006
Page Two

Please sign below to confirm the City's agreement with the matters set-forth in this letter.

Thanks much.

Sincerely,



Steven M. Strauss

Accepted and Agreed:

James T. Waring, on behalf of the City of San Diego

522542 v3/SD



CHEVALIER, ALLEN & LICHMAN LLP

Attorneys at Law

Aquatic Law & Litigation • Environmental Law & Litigation • Commercial Litigation

December 1, 2006

Jim Waring
Deputy Chief Operating Officer
Department of Land Use and Economic Development
City of San Diego
202 C Street, MS9B
San Diego, CA 92101

Gary M. Allen, Ph.D.
John Chershee, Jr.
Rita R. Hager
Bernie C. Han
Barbara E. Lichman, Ph.D.
Isaac White E. Serna, LL.M.
Frederick C. Woodhull

*Noted
*Admitted to State Bar
*CFL member

695 Town Center Drive, Suite 700
Costa Mesa, California 92626
Telephone (714) 944-4422
Facsimile (714) 944-0421
E-mail: info@chevalier.com

Re: Sunroad Centrum - Proposal to Resolve FAA "Hazard" Issues
at Montgomery Field

Dear Mr. Waring:

This letter is for the purpose of proposing a permanent resolution of the issues raised by the Federal Aviation Administration's ("FAA") imposition of a "hazard" determination¹ on Centrum 12, the first of three office buildings planned and approved by the City of San Diego ("City") as part of Sunroad Centrum, a mixed use project located at 8620 Spectrum Center Boulevard, San Diego, California.

It should be emphasized at the outset that Sunroad's principal goal in this process is to ensure the safety of the airport, the public and of its future tenants. Consistent with that goal, Centrum 12, at its current height of 180 feet, is not a safety threat. That is because the FAA has already issued a Notice to Airmen ("NOTAM"), raising the minimum altitude for a circling approach to Runway 10 to accommodate the 330 foot height of the construction crane used to build Centrum 12.² The current minimum altitude is, thus, more than 400 feet above the roof of

¹ A determination pursuant to 14 C.F.R. Part 77 that a structure constitutes a "hazard" to air navigation.

² This circling approach, the principal basis for the "hazard" determination, is used very rarely at Montgomery Field, only about 6% of the time during the last 20 years, as attested by some long standing incumbents on the airfield, and only by instrument rated pilots when the wind deviates from its usual west flow and comes from the east as during Santa Ana conditions.

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Jim Waring
Deputy Chief Operating Officer
Department of Land Use and Economic Development
City of San Diego
December 1, 2006
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Centrum 12,³ thus preventing any aircraft on approach from coming within a distance equaling approximately the height of a 40 story building above the top of Centrum 12. This NOTAM for the crane will ultimately either remain in effect indefinitely, or be replaced with either a new or revised Instrument Approach Procedure ("IAP") that will ensure that aircraft remain safely clear of the Centrum development.

That having been said, the objective of this letter is to commence the process of working with the City toward the goal of increasing the airport's safety, while at the same time allowing Sunroad's fully vested project to proceed in accordance with Sunroad's own plans and the City's approvals. Sunroad's proposal to resolve the "hazard" determination issue has five parts:

(1) That Sunroad fund a feasibility study for the development of a Straight-In IAP such as an ILS or Localizer type approach for Runway 10, thus eliminating a critical aspect of the "hazard determination" for the entire project, eliminating the need for a circling approach to Runway 10, and increasing the safety and accessibility of the airport under all wind flow conditions;

take study & submit to FAA

(2) That the City agree to accept the conclusions of Sunroad's feasibility study, and, if it determines a Straight-In IAP is feasible, the City shall formally submit the proposal to the FAA for evaluation;

(3) That Sunroad contribute to the cost of the equipment required for the associated Straight-In IAP;⁴

(4) That the City agree to adjust the visual traffic pattern at Montgomery Field, thus accommodating the project's extension into the altitude of the current traffic pattern, and if deemed necessary, chart such approach for pilots in Visual Flight Rule ("VFR") conditions to ensure awareness of the new procedure; and

³ That height includes both the mandatory 300 foot buffer between the top of the highest affected structure and the minimum descent altitude, and the height of the construction crane.

⁴ An estimate of potential costs is currently being prepared and will be submitted to the City immediately upon its completion.

Jim Waring
Deputy Chief Operating Officer
Department of Land Use and Economic Development
City of San Diego
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(5) That upon submission of this letter by Sunroad, and agreement to its provisions by the City, the City will also agree to immediately allow completion of the tasks listed in Attachment A to this letter, as well as installation of electrical and mechanical equipment on the roof and elevator equipment in the elevator penthouse.

I. BACKGROUND OF THE ISSUE.

Pursuant to its Development Agreement and Vesting Tentative Map for Sunroad Centrum, Sunroad received a Framing and Foundation Permit for a structure of 180 feet on March 27, 2006.

On July 7, 2006, the City issued Sunroad a Building Permit at 180 feet. On July 22, 2006, having verified the accuracy of the FAA's data, Sunroad submitted a second amended Form 7460-1 at 180 feet, in conformance with its Building Permit and all prior approvals. On August 11, 2006, the FAA reissued a Presumed Hazard Determination. On October 27, 2006, after a meeting between City Staff and Sunroad, the City issued a Stop Work Order on the top 17 feet of Centrum 12.

II. THE FAA'S ROLE.

In order to find a resolution that would allow Sunroad to realize its vested rights while at the same time ensuring the safety of the airport, Sunroad again retained Williams Aviation Consultants to find a functional equivalent of the circling approach. Williams recommended the development of an ILS or Localizer type Straight-In Approach Procedure.

An ILS/Localizer provides course guidance which directs an aircraft on a course straight down the runway centerline to a landing. While the circling approach currently in use is safe, most pilots prefer a Straight-In LAP because it is generally less complex than a circling approach procedure.

Recognizing that the FAA possesses plenary power over the safety of airspace, Sunroad concluded that, before making its proposal to the City, it would solicit the FAA's views on possible resolution options. At a meeting of November 29, 2006, at the FAA's Washington headquarters, attended by, among others, Kevin Haggerty, Manager of the FAA's Division of Obstruction Evaluation, and representatives of Sunroad and its consultants, Sunroad and the FAA jointly discussed various options and implementation procedures that would satisfactorily resolve any outstanding issues.

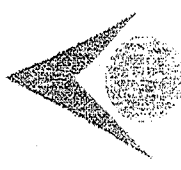
Jim Waring
Deputy Chief Operating Officer
Department of Land Use and Economic Development
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Mr. Haggerty first opined that the Straight-In IAP was a "good move" toward resolving the issue, but could not evaluate it further until the City, as Airport Operator, made a study of its feasibility, and submitted a formal proposal. Parts 1, 2 and 3 of Sunroad's proposal set forth above address this issue. Additional issues such as the need for CEQA review, and revision of the Airport Layout Plan ("ALP") to include the equipment required for the Straight-In IAP should be part of the study and proposal.

Mr. Haggerty further offered that, while the Localizer (or its more complex counterpart, an Instrument Landing System ("ILS") used at larger airports) could potentially remove the building's impact on Instrument Flight Rule ("IFR") operations, thus eliminating the hazard by eliminating the need for a circling approach, there would still remain a second component, the impact on Visual Flight Rule ("VFR") operations, represented by the building's 19 foot extension into the 160 foot horizontal obstruction surface, or traffic pattern altitude used during visual operations to and from the airport. Mr. Haggerty opined that the way to fix this second component was for the City to agree to adjust the airport visual traffic pattern vertically and/or laterally to accommodate the heights of the project's buildings. Sunroad's consultant offered the alternative of a "charted pattern" whereby the airport operator formally publishes the new traffic pattern altitude, a procedure well preceded at airports around the country. Mr. Haggerty agreed that such a proposal by the City should be submitted to, and would be seriously evaluated by, the FAA's Los Angeles Airport Districts Office with cooperation of other divisions such as Flight Standards, keeping an eye to the impacts of the change in altitude minimums on such factors as flight paths into other airports and cumulative impact of all planned building at Sunroad Centrum. He also stated that the evaluation would take between between 30 and 60 days, once the proposal is submitted. Part 4 of Sunroad's proposal addresses the way in which to gain FAA's sanction of this procedure.

III. COOPERATIVE ACTIONS BY THE CITY AND SUNROAD.

As the governing land use jurisdiction, the City's participation and cooperation at the local as well as Federal level is essential. Sunroad realizes that the studies necessary to implement its proposal are likely to be time consuming. With the Stop Work Order in place, Sunroad is disadvantaged inmediately by each day the interim delay lasts. Sunroad, therefore, requests that the City agree that, in the interim, between the submission of this letter and the FAA's approval of the results of the feasibility study, Sunroad be allowed to proceed with the activities listed in Attachment A to this letter, as well as installation of electrical and mechanical equipment on the roof and elevator equipment in the elevator penthouse.



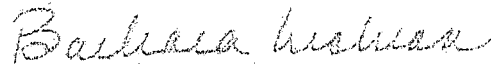
Jim Waring
Deputy Chief Operating Officer
Department of Land Use and Economic Development
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In return for the City's acquiescence to this limited relief from the Stop Work Order, Sunroad will agree that if, in the final analysis, the proposal outlined in this letter, and all reasonable variations thereto, are determined infeasible by the FAA, Sunroad will assume liability for any work performed that would otherwise fall within the parameters of the Stop Work Order. The City's agreement to partial relief from the Stop Work Order shall not prejudice either the City's or Sunroad's legal position and both sides fully reserve their respective rights.

In summary, Sunroad appreciates the City's willingness to consider avenues of constructive resolution of this issue, and wishes to reassure the City that its goals and those of the City's are identical, i.e., to ensure the safety of the public, while, at the same time, working to ensure its robust economic development and the future welfare of its citizens.

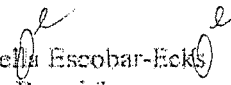
Sincerely,

CHEVALIER, ALLEN & LICHMAN, LLP



Barbara E. Lichman, Ph.D.

Attachment

cc: 
Marcella Escobar-Eckels
James Barwick
David Miller
Carmen Brock
Steve Strauss
Barry Yurtis
Tom Story
Dan Feldman
Rick Vann

RECEIVED

NOV 28 2006

DEVELOPMENT SERVICES

November 28, 2006

Steven M. Strauss

T: (858) 550-6006
sms@cooley.com

Mr. James T. Waring
Land Use and Economic Development
Office of the Mayor
City of San Diego
202 C Street, 9th Floor
San Diego, CA 92101

Re: Appeal by Sunroad Enterprises of Stop Work Order issued October 27, 2006

Dear Mr. Waring:

We are writing on behalf of our client, Sunroad Enterprises ("**Sunroad**"), regarding the Stop Work Order issued on October 27, 2006 (the "**Order**") by the City of San Diego (the "**City**") with respect to the top seventeen feet of Sunroad's Centrum 1 building (the "**Building**"). Pursuant to § 121.0309(c) of the San Diego Municipal Code ("**SDMC**"), Sunroad hereby appeals the Order. Sunroad requests that the City immediately lift the Order and allow construction to proceed on the Building.

As we explain below, the Order arises (a) from a misunderstanding of the FAA's "Determination of Hazard to Air Navigation" (the "**Determination**"), (b) from a misinterpretation of the public nuisance provisions of California Government Code § 50485.2, and (c) from an improper reference to Public Utilities Code ("**PUC**") § 21659(a).

The Building, in fact, poses NO threat to public safety, is NOT a public nuisance, has vested development rights (in favor of Sunroad), and should be allowed to proceed to completion.

The Determination is one component of a complex set of FAA regulations. Under these regulations, the Determination requires changes at the relevant airport (flight paths, circling patterns, etc.), which effectively ELIMINATE any "hazard." In our case, the Determination caused the FAA to issue a Notice to Airmen (the "**NOTAM**") which alerted pilots to the building's presence and raised pilots' circling approach altitude minimums. Once the NOTAM was issued, any potential threat to the safety of air navigation was effectively eliminated.

California Government Code § 50485.2 is NOT a basis for a finding that the Building is a public nuisance and is NOT a basis for the Order. To the contrary, § 50485.2 is designed *solely* to allow local agencies to create zoning rules, NOT to make determinations of nuisance with respect to in-process developments. In our case, that Government Code provision allowed the City to implement the airport zones that related to Montgomery Field. And the Building falls *outside* those airport zones.

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Mr. James T. Waring
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PUC § 21659(a) may not be a basis for the Order. The Building is outside those airport zones where the City may apply this statute. The Caltrans issue is not one of nuisance but is a non-substantive, ministerial matter that Sunroad is working to resolve.

With a proper understanding of the Determination, the NOTAM, Government Code § 50485.2, and PUC § 21659(a), the City has no basis to stop work at the Building. The Building poses NO threat to public safety, is not a public nuisance, and the City has no basis for so alleging. Sunroad has vested development rights with respect to the Building—most recently based on the building permit issued by the City AFTER the Determination was a matter of public record to the City.

The Order should be withdrawn. Otherwise, Sunroad will incur further extraordinary and irreversible expenses. And the City risks being liable to Sunroad for those expenses.

I. Background

A. The Building and Development Permits Granted by the City of San Diego

The City of San Diego approved Sunroad's Centrum development in November, 2002. This development, located near the Montgomery Airfield, is a combination of offices and residential buildings. The Building at issue is a 300,000 square foot, 12 story office complex. The Building is located at the northeast corner of Spectrum Center Boulevard and Kearny Villa Road. The City approved Substantial Conformance Review for the Building on February 10, 2006. At that time, the City approved construction of the Building to a height of 180 feet. On March 27, 2006, the City issued a framing and foundation permit for the Building to a height of 180 feet.

B. The City's Relevant Land Use Plans

The Centrum development is located within one mile of Montgomery Field but outside the following airport land use designated zones and adjuvant noise contours: (1) the Airport Land Use Compatibility Plan for Montgomery Field ("ALUCP"); (2) the Montgomery Field Airport Environs Overlay Zone ("AEOZ"); and (3) the Kearny Mesa Community Plan, Airport Element – Montgomery Field ("KMCPAE").

C. FAA Resolutions as well as Concurrent Action Taken by Sunroad and the City of San Diego

Title 14 of the Code of Federal Aviation Regulations ("FAR") Part 77.25 establishes an imaginary airport surface in the airspace above and around an airport. This imaginary plane, the Horizontal Surface, extends 160 feet above the established airport elevation. Entities constructing a building which may invade this Horizontal Surface are obligated to file a Notice of Construction with the FAA. FAR Part 77.15. Sunroad filed such notice on April 5, 2006. On April 24, 2006, the FAA released a "Notice of Presumed Hazard" for the Building. This notice

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concludes that the Building would eclipse the Horizontal Surface by 20 feet. Pursuant to this notice, the FAA conducted a more extensive aeronautical study of the Building as authorized by 49 U.S.C. § 44718 and FAR Part 77.33. The study took several months to complete.

Immediately following the issuance of the "Notice of Presumed Hazard," Sunroad investigated the consequences of receiving such a notice by the FAA. Sunroad hired Williams Aviation Consultants to determine whether the Centrum project would exceed the Part 77 standards. Consistent with this cautious approach, Sunroad filed a notice with the FAA on June 22, 2006. The notice informed the FAA that Sunroad would erect the Building to only 160 feet while Sunroad conducted its own investigation.

Ultimately, Sunroad determined that a number of steps could be taken by the City, the FAA and Sunroad to eliminate any perceived risks to public safety. One such precaution is the NOTAM (i.e. the FAA Notice to Airmen) which raised flight minimums above the Building. These modified flight procedures would place pilots on notice of the obstruction and raise flight minimums to accommodate the FAA buffer zone. To accommodate the construction crane for the Building, a NOTAM has been in place over this structure since June 11, 2006. The current NOTAM is actually 220 feet higher than is needed for the Building. Additionally, Sunroad determined that lighting or markings may be placed on the Building to alert pilots to the Building's presence. In light of these mitigation measures, Sunroad determined that the Building presented no risk to the public at a height of 180 feet.¹

On July 7, 2006, the City supported this determination. With full knowledge and notice that the FAA was conducting a more in-depth aeronautical survey of the Building, the City granted Sunroad a building permit for the Building. The July 7, 2006 building permit was for a building 180 feet tall. Sunroad, having completed its own investigation of the Building's safety and with the ostensible approval of the City to continue construction, informed the FAA on July 25, 2006 of Sunroad's intent to construct the Building to the City permitted height of 180 feet.

Upon completing its FAR Part 77 investigation, the FAA issued, on August 26, 2006, the Determination (i.e. the Determination of Hazard to Air Navigation). Because the FAA had already taken the procedures mandated by FAA Circular 70/7460.2K, § 5a, namely, issuing a NOTAM for the construction crane used to build the Building, the Building was already protected.

D. Caltrans Permit Request

On September 14, 2006, Caltrans notified Sunroad that it was in violation of PUC § 21659(a). This statute provides that no person shall construct a structure that exceeds the

¹ Additionally, Williams Aviation Consultants found that another structure in the area, a water tank located north of the airport, also qualifies as a "hazard" and is permitted to remain.

maximum height requirements listed in FAR Part 77 without first obtaining a permit from Caltrans. Based on the Determination, Caltrans requested Sunroad apply for such a permit.

E. October 19 Letter from the City

The City Attorney's office sent a letter to you on October 19, 2006, requesting the Department of Land Use and Economic Development issue a Stop Work Notice for the Building. The City Attorney's letter cited three reasons why the top seventeen feet of the Building created a public nuisance that warrants a Stop Work Order: (1) the building violates state, local and federal law because it is a hazard according to the FAA Determination and California Government Code § 50485.2; (2) as a hazard, the building qualifies as a public nuisance under Government Code § 50485.2 and SDMC § 11.0210; and (3) the Caltrans dispute constitutes an ongoing violation of state law.

Based on that letter, the City issued a Stop Work Order for the Building on October 27, 2006. The Order required that construction be stopped on the top seventeen feet of the Building. Sunroad now appeals this order.

II. The Determination Does Not Indicate A Violation of Federal Law Nor Does It Constitute Sufficient Grounds to Declare the Building an Airport Hazard.

The City Attorney's letter uses the Determination to justify the Order based on the allegation that (a) the Determination is a violation of Federal Law, (b) the Determination's use of the word "hazard" falls within the purview of Government Code § 50485.2, and (c) the term "hazard to air navigation" in the Determination and "airport hazard" in Government Code § 50485.2 are synonymous. For the following reasons these claims are not correct.

First, the Determination does not implicate a violation of *any* Federal law. Rather, it serves as a notice to implement the procedures required by FAA Advisory Circular 70/7460.2K, § 5a. The FAA complied with the Advisory Circular by issuing a NOTAM for the construction crane. Furthermore, when the Building is completed, the FAA will *reduce* the present NOTAM and implement a change of flight minimums to accommodate the Building. The Determination is not an indicator of actionable conduct but sets in motion procedures to eliminate any source of risk.

Second, it is improper to correlate the Determination with a state land use statute. The FAA specifically disclaims authority over land use. FAA Order 7400.2F, § 5-1-2a. Government Code § 50485.2, a land zoning statute, states the "creation or establishment of *airport hazards* be prevented by the appropriate exercise of the police power" (emphasis added). These statutes relate to entirely different matters, the FAA's to "air navigation" or "the efficient utilization of navigable airspace by aircraft" and the Government Code's to potentially life-threatening land use.

Third, the use of the word hazard within each statute is vastly different. The FAA's FAR Part 77 provision focuses on efficient and safe use of airspace. To the contrary, Government Code § 50485.2 has grave implications as it states "an airport hazard endangers the lives and property of users of the airport and occupants of land in its vicinity." Therefore, a hazard under § 50485.2 must meet a much higher and more threatening standard than that of FAR Part 77. Due to the NOTAM, the Building fails to meet the elevated standard of § 50485.2.

III. Government Code § 50485.2 Relates Solely to the City's Zoning Power.

The October 19 letter bases the Order on the authority granted by Government Code § 50485.2. However, the purpose of this statute is solely to enable the City to develop and implement zoning procedures. Government Code § 50485.2 states, "it is therefore necessary in the interest of the public safety, and general welfare that the creation or establishment of airport hazards be prevented by *appropriate* exercise of the police power" (emphasis added). The language of the statute is intentionally circumspect. The statute is predicated on using a certain, appropriate police power. The appropriate power is found in the title of the statute's chapter, "Airport Approaches Zoning Laws." The October 19 letter neglects this fact and instead borrows the language wholesale to justify the Order.

No authority is granted under Government Code § 50485.2 allowing the City to issue a Stop Work Order or otherwise halt building construction. This statute and the statute following it deal solely with airport zoning regulations. One treatise comments,

"To prevent the creation or establishment of airport hazards, a city may adopt, administer, and enforce under its police power, airport zoning regulations that may divide the hazard area into zones. Within the zones, the regulations may specify the land uses permitted and regulate and restrict the height to which structures or trees may be erected or allowed to grow." Cal.Jur.3d, *Municipalities*, § 443.

Thus, the City has no authority to issue a Stop Work Order under this statute. § 50485.2 is specifically aimed at airport zoning.

San Diego has, in fact, instituted a number of airport zoning regulations. See e.g., SDMC §§ 132.0201 and 132.0301. Pursuant to its affirmative duty under § 50485.2 "to prevent the creation or establishment of airport hazards," the City zoned the area around Montgomery Field. Specifically, this airport is governed by the AEOZ which is contiguous with the compatibility zones set forth in the current Comprehensive Land Use Plan for Montgomery Field. SDMC § 132.0306(a). The City met its safety obligations under Government Code § 50485.2 by enacting these zones. The Building, however, does not fall within this restricted area. Further, the City has not conditioned any of Sunroad's permits or entitlements on following the mandates of these zones.



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IV. The Building Does Not Meet the Definition of Public Nuisance Under City or State Law and Violates No Provisions of the Land Development Code.

The October 19 letter declares the Centrum project a public nuisance based on (a) Government Code § 50485.2, and (b) SDMC § 11.0210. The Building does not qualify as a public nuisance under either statute, nor does it violate any other applicable section of the Land Development Code.

First, Government Code § 50485.2 may not be the basis of such a determination for the reasons stated in the previous two sections. This statute grants authority to institute city zoning procedures, not to determine nuisances for projects already in development.

Second, the Municipal Code's own definition of nuisance does not apply as there is no threat to the safety or general well being of the public. The City defines a public nuisance as: "any condition caused, maintained or permitted to exist which constitutes a threat to the public's health, safety and welfare." SDMC § 11.0210. The FAA Determination resulted in action, the NOTAM, which eliminated any potential source of danger.

Finally, Sunroad does not violate any other applicable section of the Land Development Code. The most applicable section of the Land Development Code to this case is the SDMC Article 2, Division 3, AEOZ. Specifically, sections 132.0201(c) and (d) state the purpose of this code is provide the City the "opportunity to participate in the evaluation process conducted by the FAA and CALTRANS" and to ensure "the minimum vertical buffers are provided between the FAA-established approach paths and *structures* constructed within the Airport Approach Overlay Zone." The entirety of the Centrum development, however, falls outside the AEOZ. When granting building permits and entitlements, the City never subjected the Centrum development to any of the AEOZ regulations. As such, this SDMC division is inapplicable.

The City has failed to show any violation of the Land Development Code. SDMC § 121.0309 demands some breach of the Land Development Code before a Stop Work Order may be issued. The Order is, therefore, unwarranted.

V. The Caltrans Dispute Is Immaterial to the City's Position.

The City cannot justify the Order using PUC § 21659(a). SDMC § 132.0201 states the purpose of the AEOZ is to ensure "that the applicable provisions of California Public Utilities Code Section 21659, as administered by the California Department of Transportation (Caltrans), are satisfied." However the Centrum development is outside the AEOZ. Therefore, this statute has no effect. Instead, Caltrans has sole discretion to enforce PUC § 21659(a) using the penalties provided to it by PUC § 21019. Sunroad fervently believes such penalties will not be necessary as it is in compliance with all state laws.

VI. Sunroad's Rights to Develop Have Vested.

Sunroad has a vested right to build the Building to 180 feet because of the July 7, 2006 building permit. California law holds, "[i]f a property owner has performed substantial work and incurred substantial liabilities in good reliance on a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit." *AVCO Community Developers, Inc. v. South Coast Regional Comm'n* (1976) 17 Cal.3d 785, 791 (citing *Dobbins v. City of Los Angeles* (1904) 195 U.S. 223). Additionally, Sunroad's rights have vested regarding its Vesting Tentative Map, Government Code §§ 66498.1-66498.9, and its Development Agreement, Government Code §§ 65843-65869.5

Although the City is not prohibited from applying future policies to the Development Agreement, such policies are limited to "those which do not conflict with existing laws, the project entitlements or the express provisions of this agreement." Original Development Agreement § 5.1. Within the definition of conflicts within the Development Agreement are those conflicts affecting "the maximum height or size of proposed buildings on the property." *Id.* at § 5.1.1. The right to erect the Building to 180 feet has therefore vested.

VII. Potential Mitigation Measures

Notwithstanding the fact that Sunroad believes that the City issued the Stop Work Order in error, Sunroad is prepared to consider participating with the City in implementing the following mitigation measures:

First, Sunroad is currently asking the FAA to permanently change circling minimums to Runway 28R to accommodate the Building. Such changes will actually lower the minimums now in place. Furthermore, it will raise pre-Centrum flight minimums by less than 20 feet.

Second, Sunroad has already installed install lighting and placed markings on the Building to alert pilots to the Building's presence and is willing to make these fixtures permanent. While Government Code § 50485.2 charges the City with the costs of such measures within airport zones, Sunroad is willing to consider paying for such safety measures in order to complete the Centrum projects.

Third, Sunroad is willing to participate in the installation of an Instrument Landing System to Runway 10. This would eliminate the need for the circling approach now at issue. The City, as operator of the airport, would traditionally shoulder the cost of this improvement. Sunroad, however, is willing to consider contributing to the costs of this system in order to eliminate safety concerns and ensure the full development and growth of Kearny Mesa as envisioned in the Spectrum Master Plan.



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VII. Conclusion

Sunroad requests the Order be lifted immediately. Failure to do so by the City will result in irreparable harm. The City's failure to lift the Order may constitute a breach of the Development Agreement, thereby exposing the City to significant damages claims by Sunroad. We hope that the City will act in accordance with relevant law and the Development Agreement.

Sincerely,

A handwritten signature in black ink that reads "Steven M. Strauss". The signature is written in a cursive, flowing style.

Steven M. Strauss

CC: Mr. Aaron Feldman
Mr. Tom Story
Mr. Dan Feldman

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